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State Fragility and Militia Proliferation in Kenya:

A Case Study of Policy Inadequacy in the Context of Soft Insecurity

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State Fragility and Militia Proliferation in Kenya: *A Case Study of Policy Inadequacy in the Context of Soft Insecurity*

By

Pamela Wangeci Kago

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ABSTRACT

This study looks at service delivery in the context of failed states. The objective of this study is to investigate whether state failure in its provisioning capacity of basic services to its citizens has led to the proliferation of militia groups in Kenya.

The study draws upon secondary sources of literature such as research reports, articles, journals, and academic documents, classifications of militia groups, population growth and government service provision in Kenya since independence, and the basic needs of the poor in the slums to retrieve relevant information on the dimensions of fragility. Reports on the analysis of census data since 1963-2009 are reviewed to investigate whether government services in Kenya have been improving or deteriorating. Further, two main militia groups in Kenya: the Mungiki and SLDF (Sabaot Land Defence Force) are analysed to determine their agenda and activities.

The study shows that government services have declined since independence especially to the poor population. This decline in service delivery has been attributed to many factors but primarily due to population increase since independence. This has led to growth of slums due the second wave of urbanization, which has resulted in more and poorer people moving to urban centres, especially cities. The government's ability to match this growth has remained wanting and it has been unable to deliver services adequately to the urban poor. This change in demographics has resulted in weakening of the governments financial and management capacity to match the growth in population. Some of the old government policies dealing with service delivery are still in effect today, however, they have not been revised to adapt to the new challenges facing the country. The policy making process and implementation has not matched the growth of cities and population growth. Therefore many communities have been left in want of basic services like security, clean water and sanitation.

The decline in the government's ability to deliver has not been without consequences. Alternative forces have emerged to provide these basic services. Firstly there are private enterprises that provide security, water, sanitation, and public transport regulation among other services. However, most of the urban poor cannot afford these services as they come at a premium. Therefore criminal groups have emerged to take advantage of this vacuum in the provision of basic services to the poor, usually at low and affordable costs. Relationships have therefore been formed between this criminal groups and the community that are either parasitic, where these criminal groups leach on the community or symbiotic where benefits are mutual. It then becomes difficult for the state to penetrate these communities.

A detailed case study of the Mungiki and the SLDF shows that these criminal groups referred to here as militia have been in existence since independence. However they have morphed overtime and in the context of this study we show that their agenda and activities have changed. They now play a role that is otherwise played by the government due to its failure in meeting the basic needs of its citizens. They are now providing services such as security usually preying on communities but sometimes performing what communities see as a necessary evil where the government has failed them.

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1. INTRODUCTION

The quest for better service delivery by the state to its citizens is one of those beguiling challenges facing many countries in Africa. Many developing countries' policies fail to trickle down[1] to address the needs of all population, especially the poor, thus excluding them from mainstream service delivery: *Service delivery in this study refers to those basic services that a government is required to provide to its citizens such as water, electricity, sanitation and security*[2]. Therefore, this lack creates service delivery "gaps" that alternative forces in the community seek to fill.

Governments are elected by citizens to represent them and are responsible to ensure that the services are delivered to their citizenry. Failure in service delivery then erodes the state's legitimacy due to its weakened provisioning capacity[3]. As a result, externalization of major state functions occurs. Security and other service provision becomes a shared affair by the state, militia, private firms and individual initiatives[4]. Underlying this is a systematized weakening of the state.

As a result, African states lag behind all other regions of the world on all the basic human needs' indicators thus facing the multidimensional crises of underdevelopment-*economic, political, security*, across the continent[5]. In most

[1] "Tickle Down" is used in this thesis to mean that the government policies are not being implemented to reach all its population especially those of the low-income population. As a result, the low-income population is not enjoying the basic government services that they ought to be having, such as water, electricity, sanitation etc.

[2] Brinkerhoff, D.W. (2011). State Fragility and Governance: Conflict Mitigation and sub national perspective. *Development policy review.* 29(2): 131-153

[3] OECD/DAC. (2008). Service Delivery in Fragile Situations: Key Concepts, Findings and Lessons. *Journal on Development.* 9 (3)

[4] Batley, R. and Mcloughlin, C. (2010). Engaging with non-state service providers in Fragile states: Reconciling State Building and Service Delivery. *Development Policy Review,* 28(2), pp 131-154

[5] Klay,G.K. (2009). Reconstituting the Neo-Colonial State in Africa. Journal of Third world studies, vol XXVI, No.1

cases, the states therefore become irrelevant to the lives of the vast majority of the African people.

This study looks at service delivery in the context of failed states. The study contributes valuable insight that can be used in future scholarships on the area of failed states and service delivery. More specifically, the study focuses on service delivery in Kenya. It attempts to link the proliferation of militia groups in Kenya to the state's failure in its provisioning capacity of the basic services to the poor communities.

1.1 Background of Study

There has been a rampant rise in the incidence of militia emergence and activities in Kenya. Today, there are over 30 militia groups operating in different parts of the country. These are typically young people who feel locked out of the mainstream political process and are united by a common, if not always clearly articulated, social or political agenda expressed by violent means[6]. The most dominant ones are the Mungiki, SLDF, Taliban, Bagdad Boys, Sungu Sungu and the Kamjesh, commonly referred to as the "Big Six". These groups further mutate and give rise to smaller criminal gangs that spread further to other parts of the country.

This rampant rise of militia groups in Kenya was greatly experienced during the 2008 contested presidential election results. However, these militia groups existed prior to the violent election clashes although they were not as prominent. The expression of frustration at the imperfect election process by opposition supporters degenerated into ethnically targeted attacks, countered by ethnic militia groups[7]. Opposition supporters went on a violent rampage in several parts of the country, most noticeable in the slums of Nairobi, Rift valley and the Nyanza province. As a result, targeted ethnic violence escalated, and focused mainly on

[6] Nyabola, H. N. (2009). 'The Legal Challenge of Civil Militia Groups in Kenya', ISS African Security Review, vol. 18, no. 3, pp. 90-102 [Available at: http://www.ssrnetwork.net/document_library/detail/5658/the-legal-challenge-of-civil-militia-groups-in-kenya]

[7] Ibid

communities living outside their traditional settlement areas. This then degenerated into full-scale retaliatory attacks[8]

This is commonplace in Kenya, where community-based militia groups frequently emerge in response to a perceived threat against the integrity of the community. In addition, they emerge to protect specific economic or political interests and may include individuals from variety of social backgrounds, most noticeably the urban poor.

These Militia groups are one of the greatest security threats in present-day Kenya. According to various news reports, the militias are responsible for crimes ranging from murder, extortion in the city to sexual abuse of women as a campaign against indecent dressing[9]. These militia groups prey on the poorest by taking over the slums and setting up huge extortion rackets. They attempt to gain control of entire neighborhoods where the central government has little or no impact, brutally killing anyone that opposes their rule.

Further complicating the issue is the fact that clashes between the different militia groups are increasingly common, because individuals outside a dominant militia ethnic base-such as the Mungiki- are trying to organize themselves into militia groups too for counter attacks. On 3 March 2002 a violent clash between the Mungiki and the Taliban groups in Nairobi's Kariobangi North estate left 20 local residents dead and 31 in hospital, highlighting the increasing gravity of the situation[10].

[8] Kagwanja, P. (2003). Facing Mount Kenya or facing Mecca. The Mungiki, ethnic violence and the politics of the Moi succession in Kenya, 1987-2002. *African Affairs, 102*, 25-49.

[9] Kagwanja, P. (2003). Facing Mount Kenya or facing Mecca. The Mungiki, ethnic violence and the politics of the Moi succession in Kenya, 1987-2002. *African Affairs, 102*, 25-49.

[10] Anderson, Vigilantes, violence and the politics of public order in Kenya, 531; IRIN News, Kenya:
Rights activists decry circumcision threat, integrated regional information networks, 2008, http://
www.irinnews.org/report.aspx?reportid=31538 (accessed November 2011).

Therefore, this study investigates the proliferation of these civil militias in the context of failure by government to deliver services to its citizens. This study will investigate how the state's failure in its provisioning capacity has created opportunities for alternative forces to arise.

1.2 Problem Statement

This research investigates whether state failure in its provisioning capacity of basic services to its citizens has created 'gaps' that have led to the emergence organized criminal groups in Kenya.

This study also considers that there has been extensive research conducted on organic and organized criminal groups in Kenya, commonly referred to as militia formations. Ngunyi *et al* explores organic and organized criminal groups in Kenya. He looks at their formation and mapping, as well as how they are a threat to government[11]. Further, Okumu and Ikelegbe, explore militias in Kenya as a cause of human insecurity[12]. Other scholars such as Dr. Mutuma Ruteere have also studied the formation and security threat of militia groups in Kenya and Africa. However, most of these studies have shown little to no connection of militia groups to state policy failure. Therefore, this study seeks to connect the proliferation of militia groups in Kenya in the context of government failure to deliver services to its citizens.

[11] Mutahi Ngunyi And Musambayi Katumanga (2011) From Monopoly to Oligopoly of Violence: An Exploration of Organic and Organised Crime in Kenya (UNDP, Nairobi)
[12] Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

1.3 Research Questions

a) Is the proliferation of organised criminal groups in Kenya a function of state policy failure?

b) If so, what are the implications on service delivery to the community?

1.4 Significance of the study

There is a general consensus that the Post- Independence African States have failed to address and meet the needs of the predominant majority of the people of Africa[13]. As Abdi Samatar and Ahmed Samatar argue, "… *The failure of the state in Africa is so uncontested that both the scholarly discussions and policy concerns have increasingly shifted to what is called "civil society*"[14]. For this reason, Africa lags behind all other regions of the world on all the basic human needs' indicators thus facing the multidimensional crises of underdevelopment-*economic, political, and security* across the continent[15].

In most cases, the state has therefore become irrelevant to the lives of the vast majority of the African people. However, there are no significant scholarships that look at service delivery in the context of failed states, thus trying to bridge the gap between the state roles to the citizenry. Therefore, this study intends to contribute valuable insight that can be used in future scholarships on the area of failed states and service delivery.

[13] Klay,G.K. (2009). Reconstituting the Neo-Colonial State in Africa. Journal of Third world studies, vol XXVI, No.1

[14] Abdi Samatar and Ahmed I. Samatar. *(*2002). *The African State: Reconsiderations*. eds. Portsmouth, NH: Heinemann,. 286 pp.

[15] Klay,G.K. (2009). Reconstituting the Neo-Colonial State in Africa. Journal of Third world studies, vol XXVI, No.1

1.5 Research Methodology

State fragility is one of the challenges facing many African countries. As a result of state fragility, government service provision to the citizens especially the poor has continued to deteriorate over the decades. This has led to poor economic growth, increase in poverty, and increase in crime and corruption in these African countries. Kenya is no exception. As a result of the state failing, we have seen other alternative forces such as the militia rising in place of the state to illegally provide basic services to the poor e.g. electricity, water and sanitation. This research therefore seeks to investigate whether the proliferation of these militia groups in Kenya is as a result of state policy failure, and what are the implications on services delivery to the community.

This research mainly uses secondary data. Different sets of research reports, articles, journals, academic documents, in-country and out-country generated literature are reviewed, analysed, and compared in order to come up with the relevant information for this research. These documents touch on various field of study that inform this research such as state fragility and its components, classification of militias- *their mapping in Kenya*, population growth in Kenya since independence, government service provision since independence and the basic needs of the poor in slum areas. Other policies and legal documents related to service provision in Kenya such as the new and the old constitution are also reviewed. These documents have been sourced directly from various academic sources and websites, universities, organisations that deal with the plight of the poor, government press and website, as well as individual scholars in Kenya. Although there has been some limitation in collecting data from the government website such as the census data and analysis, these information could be retrieved from organisations that are directly involved with government research.

Primary data was not the main source of information for this research. However, two unstructured interviews were conducted with a political scientist and a policy and security expert in Kenya. Their response partly verified some of the

assumptions made in literature and generated new knowledge and understanding of state fragility, policy inadequacy and the militia problem in Kenya. Their input enriched the findings in the secondary data.

Due to time constraints, the research only focused on two militia groups operating in specific slum areas in Kenya. This has not affected the outcome of the research, as most of the other militia groups replicate the activities and objectives of these main militia groups selected for the research.

In analyzing the militia groups, the research greatly relied on secondary data. Due to individual security and safety, it is hard to interview the militia groups directly.

1.6 Limitation of Study

a) Some required resources on security were not readily available due to their sensitive nature such as reports on the application of the old and new security architecture in Kenya.
b) *Travel limitation.* Since the researcher is based in South Africa, there were travel limitations to Kenya to collect some of the needed data. Therefore, data collection took longer than anticipated.
c) *Access to online data:* Accessing data from online sources in Kenya proved to be difficult, for example, access to the census data and reports, as well as other legal documents.

1.7 Organisation of the Study

This research study is presented in six chapters.

Chapter 1 includes the background of the study, statement of the problem, research question, significance of the study, research methodology, and the limitations of the study.

Chapter II presents a review of the literature, which includes state fragility and policy inadequacy, types of militia groups, and the causes of rise of militia groups around the world.

Chapter III reviews the structure and functions of the Kenyan government, political history of Kenya and the regulatory legal framework that deals with criminal gangs in Kenya.

Chapter IV describes the origin and rise of Militia groups in Kenya; specifically focusing on the Mungiki and the SLDF.

Chapter V presents the relationship between state policy failure and the rise of Militia groups in Kenya. Further, it looks at the relationship between Militia groups and citizen demands, as well as the implications of state policy failure to service delivery in the community.

Chapter VI provides a summary of the entire study, discussion of the findings, implication of the findings and the conclusion.

2. LITERATURE REVIEW

2.1 Introduction

The State is more often than not viewed as a powerful overarching entity that effectively controls a geo-political domain and acts as an engine of growth and development[16] However, the problem is that the state has not always played the role it is expected to play. The states that have been unable to discharge their normal functions and drive forward development are referred to here as "fragile states". 'Africa in particular is considered as having the largest concentration of prototypical fragile states characterised by weak institutions, poverty, social inequalities, corruption, civil strife, armed conflicts and civil wars'[17]. The assumption here is that, fragile states create *"gaps*" for the proliferation of alternative forces to perform the functions of the state.

Therefore, this chapter looks at fragile states as defined by various scholars, the conceptual overview and theories of state fragility, and the relationship between state fragility and policy failure. Further, the chapter explores the different typologies of militia groups and the theories explaining their proliferation.

[16] Osaghae, E. (2007). Fragile State. *Development in Practice*, Vol. 17, No. 4/5 pp. 691
[17] ibid, pp 691-692

2.2 State Fragility: *The Conceptual Overview, Historical Background and Theories*

2.2.1 What is State Fragility? *A Conceptual Overview*

The concept of fragile states has been popularised by the World Bank and the international development community since the 1990s[18]. World Bank defines fragile states based on its Country Political and Institutional Assessment (CPIA) rating, which assesses governance and a country's ability to use development aid effectively[19]. However, the perspective of the World Bank and the international development community has not always tallied with local perspectives therefore making it necessary to adopt a balanced approach in interrogating the concept of fragile states.

For better understanding of the concept, this section explores the meaning and characteristics of a state, which identifies it as a stable or ideal state. The assumption here is that the concept of fragile states is a relative concept suggesting a deviance from the ideal state.

Origins of a State

Originally, the word 'state' was derived from the Latin word "*status*" meaning "condition"[20]. In Europe, after the revival of the Roman law in the 14th century, this Latin word was used to refer to the legal standing of people such as noble, common and clerical. The word 'state' was also associated with Roman ideas about the "*status rei publicae*" which means the "condition of public matters". However, with

[18] World Bank. (2006). Engaging with Fragile States: An IEG report of World Bank support to low-income countries under stress. Washington, DC: World Bank; **AND** OECD. (2008). Concepts and Dilemmas of State Building in Fragile Situations: From Fragility to Resilience, OECD/DAC Discussion Paper, Paris: OECD, p 12.

[19] World Bank. (2009). Fragility and Conflict. Available at:

http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/STRATEGIES/EXTLICUS/0,,contentMDK:22230573~pagePK:64171531~menuPK:4448982~piPK:64171507~theSitePK:511778,00.html {accessed on 7th March 2012]

[20] Hay, Colin (2001). "State theory". In Jones, R.J. Barry. Routledge Encyclopedia of International Political Economy: Entries P-Z. Taylor & Francis. pp. 1469

time, it lost its reference to particular social groups and became associated with the legal order of the entire society and the apparatus of its enforcement[21].

Early works of Machiavelli in the 16th century played a central role in popularising the word "state" to its modern sense[22]. Machiavelli coined the Italian term *"lo stato"* where the word "state" is also derived, which describes the whole social hierarchy that governs or rules a country. However, over the centuries, the term has come to take meanings that are more sophisticated.

Currently, there is no academic consensus on the appropriate definition of the state. More often than not, political theorists have commonly used Max Weber definition of the state. He describes a state as:
"...A relation of men dominating men, a relation supported by means of legitimate violence" - Max Weber: *Politik als Beruf*, 1919

In the Weberian point of view, a state is an entity that has a monopoly over the legitimate use of physical force within its border for the enforcement of its order[23]. In other words, Max Weber describes a state as a compulsory political organisation with a centralised government that maintains a monopoly of the legitimate use of force within a certain territory[24].

John Locke view of the state contrasts with this Weberian view of the state. In the Lockean view, the state is a vehicle for fulfilling a social contract. John Locke in his article "*The second treatise of government*"[25] argues that for the government to

[21] Skinner, Quentin (1989). "The state". In Ball, T; Farr, J.; and Hanson, R.L.. Political Innovation and Conceptual Change. Cambridge University Press. pp. 90–131

[22] Bobbio, Norberto (1989). Democracy and Dictatorship: The Nature and Limits of State Power. University of Minnesota Press

[23] Sekhar, C.S.C., (2010). Fragile States. Journal of Developing Societies (Sage Publications Inc.), 26(3), pp. 265.

[24] Cudworth, Erika et al. (2007). The Modern State: Theories and Ideologies. Edinburgh University Press.

[25] John Locke (1690). Two Treatise of Government. [Available at: http://oregonstate.edu/instruct/phl302/texts/locke/locke2/locke2nd-a.html] Accessed on 29th Feb 2012

come into being, the people have to agree that their condition in the state of nature is unsatisfactory, and so agree to transfer some of their rights to a central government, while they retain others[26]. In this view, the state does not have monopoly over the use of force, but works with the people to maintain order and provide security within its territory.

Characteristics of an Ideal State

An ideal state is commonly referred to as having attributes such as: strong and effective institutions; control over its territory; stable and cohesive population; sovereign and legitimate power within its territory; adequate resources to ensure the well being of its citizens; and respect and recognition by other states in the global community[27].

Antonio Gramsci conveys an ideal state as having two major super structural entities: the *political society*, which is the state, and the *civil society*. The political society is the arena of political institutions and legal constitutional control. It rules directly through the coercive and juridical instruments of domination[28] while Civil Society is the private non-state sphere that promotes ethical values among the population through the exercise of cultural and ideological dominance. Therefore, according to Gramsci, the state is not only defined by its attributes, but also by the constitutional and institutional control it has over its function. With this definition, it is therefore easier to ascertain whether the state is in a fragile state due to its failure to provide basic services to its citizenry, or due to failure of the implementation structures.

With changing realities and paradigm shift since the cold war period, an ideal state has been revised to include good governance, poverty alleviation and economic growth and development. Combining all these attributes, the core function of an

[26] Uzgalis, William, "John Locke", The Stanford Encyclopedia of Philosophy (Winter 2010 Edition), Edward N. Zalta (ed.), [available at: http://plato.stanford.edu/entries/locke/] Accessed on 29th Feb 2012

[27] Osaghae, E. (2007). Fragile State. Development in Practice, Vol. 17, No. 4/5 pp. 692

[28] Norberto Bobbio, "Gramsci and the concept of Civil Society", in Keane, Civil Society, pp 73-100

'ideal state' can be summarised as '*maintaining monopoly over the use of force within its territory and performing functions of a welfare state'*[29].

What then is a Fragile State?

The concept of 'fragile state' is a relative concept suggesting a deviance and aberration from the ideal state. There is no universally accepted definition of fragile states. However, different scholars and institutions have attempted to define the concept.

The term 'fragile state' has gradually replaced earlier concepts such as difficult partnerships, countries at risk, failing states, difficult environments, and low-income countries under stress. This gradual replacement of earlier concepts that defined weak states came about after the adoption of the Paris Declaration on AID effectiveness in March 2005[30].

Africa is considered to have the largest concentration of fragile states. This is so because the post-colonial states in Africa adopted the critical features of their colonial masters. The colonial state exercised hegemony over the people, as well as controlled and managed the economy. In the same sense, the post-colonial states in Africa are viewed as having elite hegemony over the unlettered citizenry, state led developments, centralised authority, and sheer magnitudes of corruption[31].

Robert Bates, in his book "*When things fell apart*", supports the aforementioned. According to him, the post independence African states have become authoritarian. The political elites have reconfigured African political institutions from multi-party to single party systems all in search of wealth and power. As a result, its citizens

[29] Sekhar, C.S.C. (2010). Fragile States. Journal of Developing Societies (Sage Publications Inc.), 26(3), pp. 265.

[30] Hout, W. (2010). Between Development and Security: the European Union, governance and fragile states. Third World Quarterly, 31(1), pp. 143.

[31] Young Crawford, (2004). The end of Post- colonial state in Africa? Reflections on changing African political dynamics. African Affairs 103(410), pp23-49

view the state as a source of insecurity and threat rather than of well-being[32]. Therefore, according to Bates, authoritarianism laid the foundations for state failure. These features of post-colonial states in Africa mark the key characteristics of a fragile state.

Cammack *et al* identify three types of groupings that can be used to differentiate the various definitions of 'fragile states'[33]. These are *State Functions, State Outputs* and *Relationships with donors*. According to Cammack, the different definitions of state fragility attempted by various scholars can be fitted on any of the three groupings, while other definitions of the concept may overlap.

State Functions refer to definitions that understand Fragile States in terms of lack of capacity or will to perform certain functions that contribute to the security and well-being of citizen's of a country. *State Outputs* refers to definitions that see Fragile States as bringing about a host of problems including poverty, violent conflict, terrorism, organised crime, global security threats and epidemic diseases that cause difficulty in neighbouring countries. *Relationship with donors* refers to definitions that understand fragile States in terms of the difficult relationship they have with a particular donor or groups of donors[34].

According to OECD's Development Assistance committee, "…*a Fragile State is a State whose structures lack political will and/or capacity to provide the basic functions needed for poverty reduction, development and to safeguard the security and human rights of their populations*"[35]. This definition of fragile state falls

[32] Bates, Robert. (2008). "When Things Fell Apart: State Failure in late Century Africa". New York: Cambridge University Press

[33] Cammack, D, Mcleod, D, Rocha Menocal, A & Christiansen, K. (2006). Donors and the 'Fragile States' Agenda: A Survey of Current Thinking and Practice, Report Submitted to the Japan International Cooperation Agency, London: Overseas Development Institute, pp 16–18.

[34] Hout, W. (2010). Between Development and Security: the European Union, governance and fragile states. Third World Quarterly, 31(1), pp. 143.

[35] OECD. (2008). Concepts and Dilemmas of State Building in Fragile Situations: From Fragility to Resilience, OECD/DAC Discussion Paper, Paris: OECD, p 12.

squarely on the first category of definitions describe by Cammack known as *State Functions*.

In addition, Osaghae defines 'fragile states' as states that lack the capacity to discharge their normal functions and drive forward development. He further defines the characteristics of fragile states as *"…weak, ineffective and unstable political institutions; inability to exercise effective jurisdiction over its territory; legitimacy crisis, contested citizenship, violent contestation of state power; unstable and divided population; underdeveloped institutions of conflict management and resolution; and pervasive corruption and poverty*"[36]. This definition therefore fits perfectly on the second category- *state outputs*-identified by Cammack et al.

More so, the Centre for Research on Inequality, Human Security and Ethnicity (CRISE) define fragile states as *"…States that are failing, or at risk of failing, with respect to authority, comprehensive basic service provision or legitimacy"*[37]. In this definition, a state is seen as fragile when it fails to provide protection of its citizens within its territory fails to provide the basic needs to its citizens and lacks the support of its citizens making it undemocratic.

Therefore, it is important to note that a fragile state is not only a state that does not meet the *basic needs of its citizenry*, but also *fails to provide authority* within its territory and *lacks the democratic support of its citizens*. There are several states in developed countries that have failed to provide some of the basic needs to its citizens. However, these states are not fragile states since they still maintain authority within their territory, and command legitimate support from their citizenry.

Fragile states are a threat to global peace, security and stability. According to World Bank Statistics, the number of states judged as fragile states by the World

[36] Osaghae, E. (2007). Fragile State. Development in Practice, Vol. 17, No. 4/5 pp. 693

[37] Stewart, F. And Brown, G. (2010). (ed.3). Fragile States. London: CRISE

Bank almost doubled from 14 in 2000 to 26 in 2006[38]. According to a report published annually by the Foreign Policy Magazine and the fund for peace, Kenya ranked 16 in the failed state index for 2012[39]. This report ranks all world countries using 12 indicators of 'State Vulnerability'. Some of these variables include economic stability, human rights, refugee status, internally displaced persons and security. Mostly contributing to this high ranking is the security situation in Kenya, Poverty, and the poor quality of life, which are as a result of poor government policies, 2007-2008 post election violence, and corruption. Poor government policies have led to the poor quality of life of the majority of Kenyans, especially those living in slum areas and low-income areas. Further, the post election violence on 2007 led to an increased number of internally displaced persons in the country, which further contributed to poverty and economic instability in the country.

In this regard, Sekhar suggests that "…to rebuild capacity in highly fragile or failed states, priority should be accorded to addressing social vulnerability through immediate political measures, followed by long term initiative to promote economic development"[40]. This study concurs with this prescription of rebuilding a fragile state. This is so because, when addressing the social factors affecting a country, the government will have to revise its policies to ensure that they meet the needs of the citizens. On the other hand, to be able to promote economic development, the government will be required to organise its institutions effectively, as well as improve policies that relate to economic development. Therefore, state fragility is not only a problem of weak institutions, and failure to perform on the part of government, but also poor policies that do not meet the needs of the citizens.

2.2.2 Historical Background on Fragile States

[38] World Bank. (2006). Engaging with Fragile States: An IEG report of World Bank support to low-income countries under stress. Washington, DC: World Bank

[39] Source: Foreign Policy Online Magazine. Available at: http://www.foreignpolicy.com/failed_states_index_2012_interactive

[40] Sekhar, C.S.C., (2010). Fragile States. Journal of Developing Societies (Sage Publications Inc.), 26(3), pp. 263-293.

Colonialism is one of the major factors that led to the evolution of state fragility in most African states and the developing countries[41].

The state model adapted by most of the African postcolonial states was imported and imposed on the colonies by the colonial governments. However, failure to properly adapt to the 'imported' state structures by the colonies led to the separation between the state and the society; *with the state exploiting rather than working together with the society*[42]. As a result, political elites exploited their positions in search of resources to consume and to expend in pursuit of power. They channelled benefits to those whom they favoured, and offset the costs they inflicted upon those whose loyalty they sought to invest[43]

In the colonial era, the natives viewed the colonial state as aggressive, enforcing its will through violence and repression, and placing emphasis on rudimentary laws and orders that ensured economic exploitation of the indigenous people[44]. They perceived the state as serving the interests of the colonisers at the expense of the indigenous people[45]. Therefore, in retaliation, the natives developed shadow state structures, mainly communal self-help organisations to fill the void left by state failure of the colonial state[46]. In the same way, in postcolonial states, the citizens view the leaders as a threat rather than a source of wellbeing[47]. Therefore, in retaliation, other alternative forces are filling in the void left by state failure of the postcolonial states.

At independence, what happened was the changing of guard rather than the character of the state. Rather than distributing resources in a universalistic

[41] Osaghae, E. (2007). Fragile State. Development in Practice, Vol. 17, No. 4/5 pp. 693

[42] Hyden, G. (1980). Beyond Ujamaa in Tanzania. London: Heinemann

[43] Bates, Robert. (2008). "When Things Fell Apart: State Failure in late Century Africa". New York: Cambridge University Press

[44] Young, C. (1994). The African Colonial State in Comparative perspective. New Haven, CT: Yale University Press

[45] Bates, Robert. (2008). "When Things Fell Apart: State Failure in late Century Africa". New York: Cambridge University Press

[46] Osaghae, E. (2007). Fragile State. Development in Practice, Vol. 17, No. 4/5

[47] Bates, Robert. (2008). "When Things Fell Apart: State Failure in late Century Africa". New York: Cambridge University Press

manner, the elites in the post independence Africa now allocated resources more narrowly, retaining a greater portion for themselves[48]. The independent African states were not properly institutionalised, therefore importing fragile state variables from colonial states.

2.2.3 Theories on Fragile States

A number of theories have emerged to explain the political disorder and decay that eventually led to fragile states. These include the Dependency Theory of 1960's-*also known as the Neo-Marxist dependency theory*; the Neo-Liberalism theory; and the Neo-Patrimonial theory of the 1980's.

The Neo-Marxist Dependency Theory

This theory attributes state fragility to the economic crisis of the 1960's. It is a theory of how developed and developing countries interact.

The dependency theory was developed in the late 1950's and became popular in the 1960's. It developed when Raul Prebisch[49] and his colleagues were troubled that the economic growth in the advanced industrialised nations did not necessarily lead to growth in the poorer nations as was assumed by the neo-classical theory[50]. Therefore, the dependency theory was used to explain the persistent poverty of the poorer nations.

The theory holds that there are a number of established nations that are continuously fed by developing nations at the expense of the developing nations own health[51]. The developing countries export primary commodities to the developed countries, which then manufacture the products and sell them back to

[48] ibid

[49] The then Director of the United Nation Economic commission for Latin America

[50] Neo-classical theory assumed that economic growth was beneficial to all

[51] Brendan McGuigan (2003). What is Dependency Theory?. *In WiseGEEK.* USA: Conjecture Corporation [Available at: http://www.wisegeek.com/what-is-dependency-theory.htm] Accessed on 8th March 2012

the developing countries[52]. Therefore, there is no "Value Addition" for the developing nations, as they never earn enough from their exports to pay for their imports. This therefore leads to an economic crisis.

Marxist dependency theory viewed the persistent poverty and fragility of developing nations as a consequence of this capitalist exploitation. Therefore, the theory suggests that to rebuild the fragile states, the developing countries should de-link their economies from the global system and adapt a state controlled development strategy[53]. That is, developing countries should embark in programs of import substitution so that they need not purchase the manufactured products from the developed countries[54]. They should however still sell their primary products to the developed countries.

The Neo-Liberalism Theory

This theory attributes state fragility to the interventionist nature of the welfare state, government subsidies, and poor allocation of resources by the state[55].

According to this theory, the state becomes fragile when it is involved in the provision of the entire basic social services to its citizens e.g. education, water, electricity and sanitation services. Most of the government resources are directed to the provision of these services. However, as the population continues to increase, government service provision begins to decrease. The government is then unable to meet the needs of all the population in the country due to poor management and financial capacity. This therefore leads to economic crisis, where the government expenditure is more than the revenue. As a result, the state seeks

[52] Vincent Ferraro. (2008). Dependency Theory: An Introduction. In *The Development Economic Reader, ed.* Giorgio Secondi. London: Routledge, pp 58-64

[53] Sekhar, C.S.C. (2010). Fragile States. Journal of Developing Societies (Sage Publications Inc.), 26(3) **AND** Mautinussen, J. 1997. Society State and Market: A guide to competing theories of development. New York: Zed Books pp 386

[54] Vincent Ferraro. (2008). Dependency Theory: An Introduction. In *The Development Economic Reader, ed.* Giorgio Secondi. London: Routledge, pp 58-64

[55] Sekhar, C.S.C. (2010). Fragile States. Journal of Developing Societies (Sage Publications Inc.), 26(3)

assistance from international financial institutions such as the World Bank and the International Monetary Fund (IMF) in an attempt to combat the economic crisis.

However, these loans from international financial institutions have conditions attached to them, requiring the developing countries to adopt a set of policy conditions advocated by the Washington consensus. The conditions include *inter alia: "…Cutting public expenditure for social services, Deregulating capital markets and domestic economies, privatisation of state-owned industries and utilities and eliminating and lowering tariffs"*[56]*.*

It is these conditions of the international financial institutions that have led to the increase in privatisation of sectors previously run and regulated by the state. However, the absence of clear private property rights is seen as one of the greatest institutional barriers of economic development and improvement of human welfare[57]. Failure to enclose and assign private property rights eventually leads to the tragedy of the commons (the tendency of individuals to super-exploit common property resources such as land and water). [58] Therefore, this creates gaps in the market system in which private "*though illegal*" providers such as the militias also step in.

This theory prescribes that to rebuild fragile states; governments need to move away from a welfare state by contracting out some of its social services to private industries and service providers. In doing so, the government needs to enclose and provide private property rights to protect against the so-called "tragedy of the commons" and the eventual rise of illegal private service providers.

The Neo-Patrimonial Theory

[56] John Quiggin. (2006). "Economic constraints on public policy", in Micheal Moran, Martin Rein and Robert E.Goodin, *The Oxford Handbook on Public Policy*. (Oxford:Oxford University Press), 537

[57] David Harvey. (2005). A brief History of neoliberalism. New York: Oxford University Press

[58].

This theory links state fragility to the patrimonialistic nature of the state. This involves redistributing resources as favours to followers that respond with loyalty to leaders[59].

Neo-Patrimonialism denotes a system where patrons- *in this case the elites in government*, use state resources in order to keep the loyalty of their clients in the population. Most African states have become authoritarian in that, rather than distributing benefits in a universalistic manner where all population benefits, the elites now allocate these benefits narrowly, thereby retaining a greater portion for themselves.[60] As a result, the citizens increasingly view their leaders as a source of insecurity, and the state as a source of threat rather than of well-being[61]. Therefore, this patrimonial nature of state elites is what laid the foundation for state failure.

Due to this unequal distribution of resources to the citizens by the political elites, human insecurity has increased thus leading to state failure. Human security is about creating conducive environment for individuals to live in '*freedom from want*' and '*freedom to*'. 'Freedom from want refers to the absence or protection from hunger, natural disaster, torture and so on. While 'freedom to' refers to the opportunities that individuals should have to develop their potential as much as possible and to enjoy life to the fullest[62]. However, with Neo-Patrimonialism, most citizens are denied the access, protection and empowerment to the material or quantitative dimensions of human existence such as food, shelter, clothing, education and health care[63]. Further, the citizens lack access to non-material or qualitative conditions of human existence, such as freedom, liberty and

[59] Richards, Paul (1996). *Fighting for the Rain Forest: War, Youth & Resources in Sierra Leone*. Oxford: James Currey. Pp 34-35
[60] Bates, Robert. (2008). "When Things Fell Apart: State Failure in late Century Africa". New York: Cambridge University Press
[61] Ibid, pp53
[62] Luk Van Langenhove. (2004). Regionalising Human Security in Africa. *Paper for the "UNU-TICAD III Follow-up" Workshop Tokyo, 29-30 March 2004.* United Nations University: UNU-CRIS
[63] ibid

participation in the decisions of the community that affect their lives[64]. This therefore leads to state fragility.

2.2.4 Policy Making on Fragile States

Different scholars and practitioners have identified numerous drivers of state fragility for example: poverty, economic stagnation, authoritarian rule, oppression of ethnic minorities, unequal access to services, unemployment, and political contestation. Most of these concerns relate to the state and society, and are therefore connected to policy, and how the society is governed by government policies[65].

An analysis done and published by Centre for Research on Inequality, Human Security and Ethnicity (CRISE) in June 2010, aims at making the concept of 'fragile states' operational for development policy[66]. In this analysis, CRISE propose a three-pronged definition of fragile states as "*…States that are failing, or at risk of failing, with respect to authority, comprehensive basic service provision and legitimacy*"[67].

Therefore, ***authority failure*** means a state lacks the authority to protect its citizens from violence of various kinds. This means the state is not providing adequate security to its citizens. ***Service failure*** means a state fails to ensure all citizens have access to basic services. More so, ***legitimacy failure*** means the state enjoys only limited support among the people and it is typically not democratic. All these dimensions that define state fragility have a causal relationship as shown in the figure below.

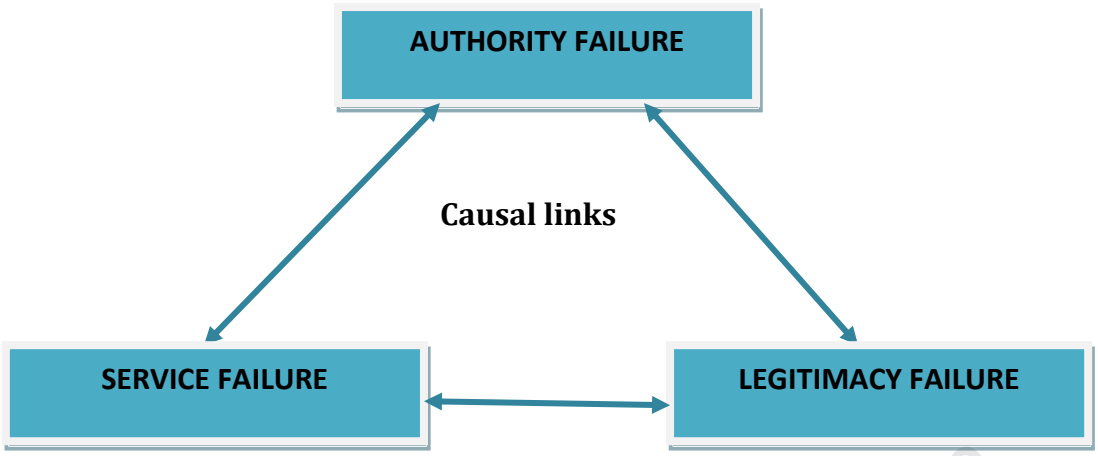
Figure 1: Causal Relationship between the three dimensions of Fragility

[64] ibid

[65] Brinkerhoff, D.W. (2011). State Fragility and Governance: Conflict Mitigation and Subnational Perspectives. Development Policy Review, 29(2), pp. 131-153.

[66] Stewart, F. And Brown, G. (2010). (ed.3). Fragile States. London: CRISE

[67] Ibid



(**Source:**Stewart, F. And Brown, G. 2010. (ed.3). Fragile States. London: CRISE)

As illustrated above, authority failure is associated with service delivery failure and vis versa. Therefore, lack of authority, that is, failure by government to provide adequate security to its citizens makes it difficult to deliver services effectively. More so, service delivery failures on the other hand are associated with conflict and loss of authority.

In addition, legitimacy failures are mainly associated with poor service delivery and lack of authority.[68] When the state fails to provide basic services to its citizens and to ensure their security within the territory, it will most likely than not fail to receive support from its citizens. In the same manner, when there is no support from the citizens, it is difficult for the state to exercise authority and protect its citizens from violence. Therefore, all the three components are associated with each other. Meaning that failure to perform one of the dimensions of fragility by the state will possibly lead to failure in the other two dimensions.

Therefore, this confirms the fact that state fragility is not only about a state that does not meet the *basic needs of its citizenry*, but also *fails to provide authority* within its territory and *lacks the democratic support of its citizens*. This eventually

[68] Stewart, F. And Brown, G. (2010). (ed.3). Fragile States. London: CRISE

creates a gap in the society that other alternative forces emerge to fill in, in place of the government.

From a policy perspective, it is important to note that most state policies are differentiated alongside the three dimensions of fragility identified above. There are policies that deal with issues of service delivery to the citizens such as basic health and education, other policies deal with protection of the citizens within the countries territory, and others deal with promoting democracy and participatory governance.

Therefore, failure of either of these policies means that the state is at risk of failing. In this case, a state needs to identify from which direction state failure is occurring and why the failure came about. That is, identify which policies are responsible for which particular direction or dimension of failure. Once the policies are identified and corrected, the underlying causes of state failure may be prevented. A good policy is one that tackles the underlying causes of failure to prevent a recurrence or breakdown.

Risk Factors Associated with Authority, Service and Legitimacy Failure

Analysing the three dimensions of fragility, we can identify some risk factors associated with each dimension. Risk factors that may lead to authority failure include socio-economic inequalities, political inequalities, low incomes, lack of employment opportunities and weak security apparatus.

Similarly, the risk factors that may lead to service failure include poor revenue potential, lack of technical and administrative capacity, unwillingness of government to meet the needs of certain groups, and unwillingness of government to introduce adequate taxes[69]. Potential reasons for legitimacy failure include military domination, absence of democratic structures, government control of press, high level of corruption, among other factors.

[69] Stewart, F. And Brown, G. (2010). (ed.3). Fragile States. London: CRISE

Therefore, analysing these risk factors shows that poor government policies are a key contributor to state fragility. A fragile state therefore needs to constantly review and revise its policies to ensure that the needs of its citizenry are being met, there is adequate security within its borders, and democracy is being exercised. Failure to do so keeps a state at a risk of failing and eventually loosing its legitimacy. Stewart and Brown clearly state that:

"…A major issue with respect to policies towards state failure is that frequently it is the government itself that is responsible for these failures; in such cases, failure is the intended, not the unintended, consequence of government policy"[70].

This means that when governments do not constantly review and revise their policies to adapt to the changing times and also to ensure their effectiveness in meeting the needs of all citizenry, then failure as a result of these policies becomes an intended consequence of government actions.

2.3 Background on Militia Groups

2.3.1 Definition of Militia Groups

A review of literature on militia reveals a wealth of information about militia organization structures and the purpose or objectives of militias. However, there are little attempts in these scholarly materials to define the movement. When the definition is provided, it is usually narrowly focused. For example, Freilich et al define the modern militia movement as "…*a group of loosely affiliated organizations without central leadership*"[71]. According to them, the militias are committed to a set of core beliefs aimed at protecting citizen's rights from perceived threats.

[70] Ibid

[71] Joshua D. Freilich, Nelson A. Pichardo Almanzar & Craig J. Rivera (1999): How social movement organizations explicitly and implicitly promote deviant behavior: The case of the militia movement, Justice Quarterly, 16:3, 655-683

Similarly, Okumu and Ikelegbe define militia groups as *"…a civil force or privately organized group of armed person, whose structures, hierarchy, command, procedures and processes are usually not fixed and rigid; and are generally mobilized voluntarily on the basis of some common identity challenges, general concerns and threats"*[72]. According to Okumu et al, the purpose or goals of militias usually relate to protecting, fighting for and defending citizens ethnic, religious, sectional, regional or related interests that may concern power, security and safety[73].

More so, Schultz, et al in their definition of militia provides a starting point for the study of militia by defining them according to a set of descriptive characteristics:
"…*A militia in today's context is a recognizable irregular armed force operating within the territory of a weak and/or failing state. The members of militias often come from the under classes and tend to be composed of young males who are drawn into this milieu because it gives them access to money, resources, power, and security. Not infrequently they are forced to join; in other instances it is seen as an opportunity or a duty. Militias can represent specific ethnic, religious, tribal, clan, or other communal groups. They may operate under the auspices of a factional leader, clan, or ethnic group, or on their own after the break-up of the states' forces. They may also be in the service of the state, either directly or indirectly. Generally, members of militias receive no formal military training. Nevertheless, in some cases they are skilled unconventional fighters. In other instances they are nothing more than a gang of extremely violent thugs that prey on the civilian population*"[74].

Based on the characteristics of militias presented above, it is possible to classify militia groups into multiple categories and label them in a number of different ways. While some Militia groups may be labeled 'Rebel Groups' in the case of Eastern Congo, typifying their agenda and recognizing them as threats to security;

[72] Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

[73] ibid

[74] Richard Schultz, Douglas Farah and Itamara V. Lochard, *Armed Groups: A Tier-One Security Priority,* INSS Occasional Paper 57, (USAF Academy, Colorado: USAF Institute for National Security Studies, 2004).

their counter parts, in Kenya, may be referred to as 'gangs' implying lack of a system and structure in their agenda[75].

Therefore, the above definitions of militias provide a baseline by which we can attempt to classify different militia groups.

[75] Nyabola Nanyala. The legal challenge of civil militia groups in Kenya. African Security review 18.3. Institute of Security Studies

2.3.2 Types of Militia Groups

Different types of militia groups exist as has been demonstrated in the definitions above. They are differentiated by their functions, objectives, origin, and purpose of their existence. There is no universal classification of militia groups. However, the most common classification used for militias is state militants and non-state militants. All other categories fall as sub-categories of these two main classifications.

2.3.2.1 State Militants

State Militants are *"...paramilitary formations that organize in defense of the political order, and proxies set up as adjuncts of state power"*[76]. These militias fight for, or on behalf of the state or state functionaries[77]. They may be called upon by the state to perform occasional duties of defending the state interests.

The state militants are sub-divided into three sub-categories. These are the quasi military, the government militias, and the state patronized militias[78]. The quasi military are a reserve military force with occasional duties established for a particular purpose such as disasters, internal conflicts and wars[79]. However, they are not part of the regular army organization.

The government militias are a civil armed group constituted by government to provide defense, emergency law enforcement, paramilitary service, or combat certain threats and security issues in times of emergency without being committed to a fixed term of service. The state patronized militias are tied to a particular political regime.[80] They are formed to serve the agenda and interests of the regime

[76] Gani J Yoroms, Militias as a social phenomenon: towards a theoretical construction, in David J F rancis (e d), Civil m ilitia; A frica's i ntractable s ecurity m enace? Aldershot: A shgate, 2005, 31–50.

[77] Marie-Joelle Z ahar, P rotégés, c lients, c anon f odders: ci vilians in t he c alculus o f mi litias, in Adekeye Adebayo and Chandra Lekha (eds), Managing armed conflicts in the 21st century, London: Frank Cass, 2006, 108.

[78] Gani J Yoroms, Militias as a social phenomenon: towards a theoretical construction, in David J F rancis (e d), Civil militia; A frica's i ntractable s ecurity m enace? Aldershot: A shgate, 2005, 31–50.

[79] Okumu and Ikelegbe (2010) pg. 6

[80] ibid,6

in power at the time of its reign. However, when there is a regime change, this militia group ceases to exist.

2.3.2.2 Non-State Militants

Non-State Militants are 'privately' organized armed groups. They are without standard military unit organization. This means that they are not part of the regular army of the state. They are composed of ordinary citizens who organize themselves to combat certain threats and security issues. They have no regular salary, or a fixed term of service.

Non-state militants are recruited from local areas, communities and provinces, and are more often engaged in sectional and primordial causes. They represent specific ethnic, religious, tribal, clan, or other communal groups, and are mostly composed of young males from under classes. They take the form of political, community, ethnic, religious, vigilantes, warlords and youth militias'.[81]

Political militias are those militias that struggle for political domination. They fight an insurgency against a particular regime in favor of their preferred political candidate. Their activities are mostly political violence, racketeering, terrorism and kidnappings. They include the likes of the Ninjas in the Republic of Congo. This particular group of militias participated in numerous wars and insurgencies in the 1990's and 2000's.

The community/ethnic militias are youth based groups formed with the purpose supporting a cause aligned with ethnic interests. Their objective is to promote and protect the parochial interests of their ethnic groups. They provide security for their communities; fight for inclusion, resources and justice for their communities; and prevent crime in the community.

[81] Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies, pg 6-8

Further, these ethnic militia groups can take the form of *marketised militias*[82]. Meaning, they form a kind of "bandit economy" within their ethnic communities to provide for the economic needs of their community such as employment and provision of basic services such as electricity and water. This category of militia includes the Mungiki in Kenya, Interahamwe in Rwanda, Egbesu/Oduduwa People's Congress in Nigeria, among others.

The vigilantes, warlords and youth militias are the non-state militias that fight for identity, resource access, security crime control and power. An example is the Bakassi boys in Nigeria. The table below represents this classification of militia as state or non-state militant groups.

Table 1: Typology of Militias in Africa

	TYPES	**GOALS**	**CASES**
STATE MILITIAS	Reserve army	Compliment State Military	National Guard (Nigeria)
	Government supported or patronized	Counter insurgency	Popular Defence Force / Janjaweed (Sudan) Kamajor (Sierra Leone) Fifth Brigade (Zimbabwe) Arrow Group (Uganda) Jeunes Patriotes (Côte d'Ivoire)
NON-STATE/PRIVATE MILITIAS	Political militias	Political Objectives-struggle for political domination	Mambas, Cobras and Ninjas (RoC)
	Community/ethnic Militias	Identity Rights Struggle for inclusion, Resource and Justice	Egbesu/Oduduwa People's Congress (Nigeria) Mungiki (Kenya) Militias under Southern Defence Force (Sudan) Interahamwe (Rwanda)
	Youth militias	Identity resource access insurgency	Niger Delta Volunteer Force / Movement for the Emancipation of the Niger Delta (Nigeria)
	Vigilantes Militias	Security crime control	Bakassi Boys (Nigeria)
	Warlords Militias	Struggle for power and resources Commercial violence	Armed bands and cult groups in the Niger Delta (Nigeria)

[82] Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi: The Consulting House

(**Source:** Source: Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies. Pp 8)

In Kenya, most of the militia groups that exist fall under the category of non-state militants. They are mostly ethnically oriented and seek to protect the interests of their own communities. Usually, they do so in response to government failure to provide basic services to the community such as clean water, electricity, sanitation, health facilities, employment opportunities, security and education.

However, some militia groups may be composed as non-state militants but sometimes work with the state to promote state interests. An example is the Mungiki in Kenya. During, the elections in 2007, they were hired by some politicians to rally support from the Kikuyu community. In other occasions, the government hunts them down because they are a threat to the citizen's security. In this case, it would be useful to add a third classification of militias known as ***"pseudo militias"*** to represent this category of militias. Pseudo militias can be defined as militias that are essentially non-state militants, but are occasionally hired by the state elites to promote their political interests.[83]

2.3.3 Causes for Proliferation of Militia Groups

Several explanatory perspectives on militia can be used to decipher their proliferation and sustenance. There is usually a direct correlation between poverty and militia membership as well as between wealth and the proliferation of militia gangs. This means that when a small proportion of the population controls wealth, then civil disorder and gangs are likely to emerge. This is the case in South America and the developing countries.

Further, most militia members are not born bad, but are victims of the environment they live in. Most of them grow up in impoverished environments with lack of education, unemployment and no way out for them. Therefore, they end up, as a natural human reaction, grouping together for survival.

[83] Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi: The Consulting House

Therefore, it is imperative to note that, different militias form for different reasons, as the next section of this study shall explain.

2.3.3.1 State Militants

This study has shown that not all militia groups operate as insurgents against the state. Those militia groups organised in defence of a political order, or fight on behalf of the state and state functionalities are known as the state militants[84]. The reason for their proliferation is essentially state centric. The state usually demands for their services especially in times of emergency. They are different from the police force in that, the police are involved in the day to day maintenance of law and order, preservation of peace, protection of life and property, prevention and detection of crime, apprehension of offenders, and the enforcement of all the laws and regulations with which the force is charged[85].

Usually, the state militants are tied to a particular regime and may be remunerated and equipped with public funds. The state makes use of them based on utility and expedience[86]. For instance, they maybe reserved for occasional duties established for a particular purpose such as disasters, internal conflicts and wars. The government discreetly funds, equips and protects them for the purpose of crime control and counter insurgency[87].

An example is the *Janjaweed* militias in Sudan. The government has used them to fight rebel groups in the Darfur region. Similarly, in Cote d' Ivoire, the *Congrès Panafricain des Jeunes et des Patriotes (COJEP)*, commonly known as young patriots are used by government to target northerners, immigrants and the French[88].

[84] Marie-Joelle Zahar, Protégés, clients, canon fodders: civilians in the calculus of militias, in Adekeye Adebayo and Chandra Lekha (eds), Managing armed conflicts in the 21st century, London: Frank Cass, 2006, 108.

[85] Section 14 of the police act (1988). See Kenya police website: www.kenyapolice.go.ke

[86] Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies, pg 6-8

[87] ibid

[88] Boas Morten, Economic indicators and ethno-national rebellion. The case for secessionist and non-secessionist groups, Paper presented at the annual meeting of the International Studies Association, 48th annual convention, Chicago, Illinois, 28 February 2007

2.3.3.2 Non-State Militants

There are several explanatory perspectives for the proliferation of non-state militants. These may be political, social or economic reasons. Politically, they form to fight for inclusion in the political system as well as for justice. Socially, they fight for equality in the distribution of public resources by government, especially to the poor community. Economically, they fight for education and job opportunities to improve the living conditions of the poor in the community.

To emphasize the aforementioned, Ngunyi *et al* offer three explanations regarding non-state militia proliferation.

The first relates to ***space.*** In this study, space refers to the governance space. Re-organised spaces like slums create opportunities that naturally attract crime, thus resulting is some form of decay. According to this theory, the further the slums are from the centre of control, *which is the government*, the greater their distance decay in terms of control and interaction[89]. Therefore, this means that the social spaces that are not administered by the state due to their distance from the central control are breeding ground for private violence, leading to the rise of militia groups to fill in the spaces. However, distance is not the only factor that causes decay, other factors include relationships, economic exclusions, and distance between the poor and the law. All these offer a good breeding ground for crime and violence.

An example of a non-state militia groups that emerged due to *space* issue is the Mara Salvatrucha, commonly known as MS 13 in El Salvador. This dangerous gang started in the 1980's in Los-Angeles by Salvadorian immigrants to the United States running away from the civil conflict in El Salvador. They formed the gangs to protect themselves from racial violence and attacks by other gangs[90]. However, when they travelled back to El Salvador, their government

[89] Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi: The Consulting House

[90] *Arian Campo-Flores, Andrew Romano*. Mar 28, 2005. The Most dangerous gang in America: MS 13. In ***Newsweek***. New York: Vol. 145, Iss. 13; pg. 23-26

failed to resettle them and to integrate them back to the community[91]. More so, the government failed to protect them, and to provide programs that they can actively be involved in to earn a living[92]. As a result, the returning immigrants ended up settling in slum areas and they formed gangs to protect themselves from rivalry gangs that they found in El Salvador, as well as to provide food for their families.

Similarly in Belize, a country known as home to multi-dollar businesses involved in Cocaine smuggling. The Colombians use local gangs such as the Sicario, to smuggle drugs through Belize by sea to the Mexican Local Cartels[93]. This happens mainly because of economic exclusions of majority living in the slum areas. There are approximately 23 gangs in Belize and over 3,000 gangsters[94]. These gangs live in the poorest areas ignored by the government. They sell crack cocaine and Marijuana to earn a living and support their families as the government has failed to provide welfare services in rural areas.

J.Q. Wilson and G. Kelling's B*roken Window* thesis affirms the foregoing[95]. According to them, crime and disorder are rooted in decaying neighbourhood. Their position is that the situation of societal neglect feeds crime. In other words, emergence of armed groups is much the consequence of societal neglect. Disorder, they note, has to be contained before it spreads out[96]. Yet merely concentrating on their spaces of retreat cannot capture the type of crime, especially the emergence of armed groups. More so because they have multiple centres of gravity that have to be identified, located isolated and destroyed. Of

[91] Andrew, M.Grascia.(2004). Gang Violence: Mara Salvatrucha-"Forever Salvador". In *Journal of gang research*, 11 (2) pp 29-36

[92] 7 San Diego Int'l L.J. 223 (2005-2006). Mara Salvatrucha (MS-13) and Ley Anti Mara: El Salvador's Struggle to Reclaim Social Order; Fogelbach, Juan J.

[93] Dennis Rodgers. (1999). Youth gangs and Violence in Latin America and the Caribbean: A literature survey. In, LCR sustainable development working paper no.4: Urban peace program series. LCR: world bank

[94] Robert Hanson, Greg Warchol & Linda Zupan (2004): Policing Paradise: Law and Disorder in Belize, Police Practice and Research: An International Journal, 5:3, 241-257

[95] Se J.Q Wilson and Kelling G. Broken Windows: The Police and Neighborhood safety. The Atlantic Monthly (march 1982)

[96] See Wilson James and Kelling George 1982, Broken Windows Atlantic March

equal importance is that these spaces could be located amongst the political class. This implies that location is not an end in itself[97].

The second explanation for non-state militia proliferation focuses on ***governance***. The central issue is that a 'too small' government force is policing far too many spaces thereby causing an imbalance. As a result, those distance spaces close up limiting the influence of the government on their activities. Therefore, alternative forces such as the militia rise up to police them and increase their legitimacy in the community. A symbiosis between the 'supply' of criminal activities and its 'demand' by community begins to emerge[98]. The further away the state is from the closed spaces, the higher the legitimacy of gangs as the 'alternative state'. And this is how the militias emerge.

A good example of militia proliferation due to governance issues is in Colombia; a city torn apart in the most barbaric civil wars in modern history. Colombia is home to another gang known as the Sicario. For the last four decades the Colombia government has been fighting the Left Wing Guerrillas. Since the 1980's the government troops were supported by an illegal group of paramilitary army[99]. This gave birth to its very own breed of killers known as the Sicario who are trained to kill without mercy[100]. Since 2003 the Colombia government tried to demobilize most of the Para-military members and initiated a school program to integrate the Para-militaries back to civil life[101]. However, despite the demobilization, there are still some paramilitaries continuing to recruit from other local gangs, and therefore, Sicario continues to exist. The reason for their existence is their lack of faith and confidence in the Colombia government[102]. The Sicario do not agree with the justice system in Colombia, because most offenders are usually released and continue with crime in the

[97] Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi: The Consulting House

[98] Desperate for protection, 'unpoliced' spaces from 'below' look for alternative policing. The criminal gangs gleefully fill the gaps.

[99] Charles W. Bergquist, Ricardo Peñaranda, Gonzalo Sánchez G. 2001. Violence in Colombia, 1990-2000: waging war and negotiating peace. Wilmington: Scholarly Resources Inc

[100] Peter Waldmann (2007): Is There a Culture of Violence in Colombia?, Terrorism and Political Violence, 19:4, 593-609

[101] Ibid

[102] Sue Mahan, Katherine O'Ne. 1998. Beyond the Mafia: Organized Crime in the Americas. London: Sage Publications

communities. Therefore, their aim is to kill and bring justice in the community. They protect the community from people who take advantage of them for money through social cleansing.

The third explanation on proliferation of non-state militias is anchored in the classical theory of crime, a variant of the classical school of criminology.[103] Its emphasis is on ***reason*** noting that people exercise their free will and are thus responsible for their actions[104]. This means that actions are weighted on the potential pleasure derived as well as the associated pain. Therefore, crime is committed out of rationalised calculation of value of expected returns. In other words, groups that commit acts deemed criminal are driven by a calculated expected value return. The inclination is bound to increase to the extent that the variable of capture and punishment is lesser or not costly compared to non-action.

An example of a gang that operates by virtue of reason, so as to get a valued return is in Bulgaria. In Bulgaria, people turn to criminality due to high levels of unemployment and poverty. In 2007, Bulgaria joined the European Union, but 18 months later, the EU had to take drastic measures and withdrew its support due to corruption and organised crimes. Most gangs in Bulgaria are involved in pick pocketing, prostitution, credit card frauds, human trafficking among other crimes[105]. However, the most popular crime is pick pocketing especially in the UK. The gang operating in the UK makes approximately 200 million pounds every year from pick pocketing.

2.4 Summary

This chapter of the study has introduced the concept, theories and historical background of state fragility. Further, this chapter has looked at the different types of militias and the reason for their proliferation. The aim of having this

[103] Cesare Beccaria (1764): An Essay on Crime and Punishment (Dei Delitti e dello Pene). Translated with Introduction by H Paolucci. Indianapolis. In Bobbs- Merrills 1975.

[104] Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi: The Consulting House

[105] Zoltan D. Barany. (2002). The East European Gypsies: Regime Change, Marginality, and Ethnopolitics. UK: Cambirdge University Press

background on state fragility and militia proliferation is to determine whether the emergence of alternative forces such as the militia groups is a function of state policy failure.

From the analysis in this chapter, it is clear that when the state policies fail in the areas of *service delivery* to its citizens, *authority*- that is; provision of security within its territory, and *legitimacy*; whereby the state has adequate support from its citizens, then a gap is created and alternative forces emerge to fill in this gap.

Alternative forces such as the militia groups emerge due to the 'space' that exists between the government and the community. This space is created due to government absence in its provisioning capacity. An example is the gangs that emerged in El Salvador and Belize to fill in this space in their countries by providing services that their governments have failed to provide for the community.

Further, due to poor governance whereby, a small government force is policing far too many spaces thereby causing an imbalance, alternative forces emerge. These alternative forces, in the form of militias, emerge to police the distance spaces that have closed up limiting the influence of government on their activities. This increases the militia legitimacy in the community, while reducing that of government. Lastly, militia groups and other alternative forces also emerge due to the expected returns they derive from their actions in their community.

Therefore, to reduce this 'gap' created by poor state policies, and that leads to the emergence of these alternative forces, the governments need to review and revise their policies to ensure that they adapt to the changing realities, and meet the needs of the citizens. These policies need to constantly be reviewed and revised to ensure that the gap between the centre of control and the community is always at its minimal, and also to ensure that there is a balance between the government forces deployed to govern a particular space, and the space they are governing. By closing up this 'gap' there will be no need for alternative forces to

emerge, and service delivery by the government to its citizens will greatly improve.

3. POLITICAL AND GOVERNMENT STRUCTURE OF KENYA

This chapter of the study looks at the general background of the political and government structure in Kenya. It will give a background to the next chapter's exploration of whether there are legislative, policy and administrative failures that have led to the proliferation of militia groups in Kenya. We will also look at a brief political history of Kenya to investigate if militia proliferation and activities have their genesis in Kenya's political past.

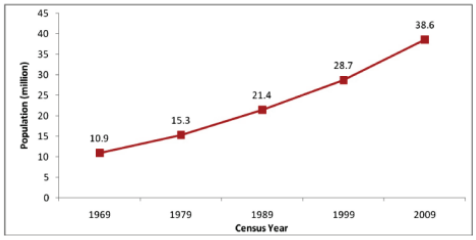
3.1 Geographic location and Population Composition

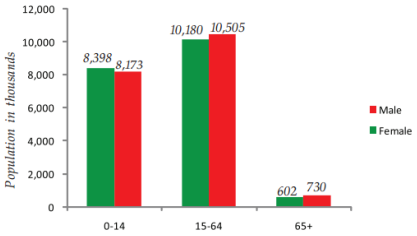
The Republic of Kenya is a country in East Africa that lies on the Equator. It is bordered to the South by Tanzania, Uganda to the West, Ethiopia and South Sudan to the North, Somalia and the Indian Ocean to the East. Kenya is a former British colony and covers a landmass area of 580'000 km^2 with a population of 38,610,097 according to the 2009 population and housing census.

Figure 2: Map of Kenya

The population is composed of about 42 ethnic groups speaking different languages from the Bantu, Nilotic, and Cushitic linguistic groups. The major ethnic groups include the Kikuyu (6 Million), Luhya (5Million), Luo (5 Million), Kalenjin (4 Million), Kamba (3.9 Million), Kisii (2.2 Million) and the Mijikenda (1.1 million)[106]. However, English, is spoken as the official language, while Kiswahili, stands as the national language. The majority of Kenyans profess to be Christians (82%) while a good number of minorities exist; Muslims (11%), Traditional African Religions (5%), irreligious (2%) and Hindus 1%[107]. Most of the Muslim population is to be found in the coastal regions while the rest of the country is largely Christian.

Figure 3: Population of Kenya





[106] **Kenya national Bureau of Statistics.** *Kenya 2009 Population and Housing Census Highlights.* Nairobi : KNBS, 2009.

[107] ibid

3.2 History

3.2.1 Pre history

The area that is now known as Kenya was historically stateless. Its inhabitant's civility and ethnicity was shaped by their subsistence: herding, farming or both. Ethnic economies were often complimentary with different specialization[108]. In an environment of under population and a lack of a centralized power tribal rivalry could not be sustained. The different ethnic groups therefore co-existed in relative peace and harmony. It was European rivalry that introduced the concept of a state government to Kenya and the African continent.

3.2.2 Colonization

In 1884, behind closed doors at the Berlin conference, European powers met and decided the fate of the African continent. No African leaders were invited or consulted. In 1888 Sire William Mackinnon received a royal charter and concessionary rights to develop trade in the East Africa Coast under the aegis of the British East African Company (BEAC). In 1895 BEAC ran it financial difficulties and the British Government stepped in to establish formal control of the region through the East African Protectorate[109]. This was largely confined to the coastal region due to the difficult terrain and hostile tribes of the hinterland. However the building of the Kenya-Uganda railway opened up the interior to British settlers who eventually moved their administrative capital from Mombasa to Nairobi. The colonization process was well underway and it eventually saw an upsurge in European settlers from a mere 9000 in 1920 to 80000 in the 1950s. Kenya was transformed into a crown colony in 1920 after much lobbying from white settlers and a legislative Council was established but no Africans were allowed any political involvement or participation.

[108] *Kenya: Ethnicity, tribe and state.* **Londsdale, John.** s.l. : Trinity College Cambria, 2008.

[109] **Firestone, M.** 2009. *Kenya.* Nairobi : lonely planet

White settlers and white war veterans were offered subsidised land in the highlands around Nairobi. They owned about 20% of Kenya's rich farmland while they encouraged indigenous communities to farm on the other 80% to add to the state revenue[110]. Therefore by default the second economic hub became the kikuyu-land and the kikuyus' were under the greatest pressure from white settlers[111]. Political activism and by extension the anti-colonial movement resulted in this region under the leadership of such people as Harry Thuku and Jomo Kenyatta (Then Johnstone Kamau). The MauMau, a secret, violent offshoot of this union was born out of this anti-colonial movement[112]. Their aim was to drive out the white farmers, reclaim and occupy these farms.

3.2.3 Independence

After WWII, small guerrilla outfits began to attack and intimidate white settlers in Kenya and anyone that seemed to collaborate with them. After about four years of intense military operations the various MauMau units came together and the umbrella of Kenya Land Freedom Army led by Field marshal Dedan Kimathi[113]. Worthy to note here is that the Mungiki, covered extensively in another section of this thesis refer to themselves as a *thuna cia Maumau (*MauMau offshoots)[114]. The war for independence then began in earnest and resulted in the British declaring a state of emergency in 1952. By 1956 the war had been quelled but the struggle for independence continued. The British finally transferred power to a democratically elected government in 1963. It also offered financial support to buy off white settlers in the form of loans and grants and restore local tribes to their homelands[115]. On 12 December 1964 the Republic of Kenya was proclaimed, and Jomo Kenyatta became Kenya's first president.

[110] *Kenya: Ethnicity, tribe and state.* **Londsdale, John.** s.l. : Trinity College Cambria, 2008.

[111] **Firestone, M.** *Kenya.* Nairobi : lonely planet, 2009

[112] *Kenya: Ethnicity, tribe and state.* **Londsdale, John.** s.l. : Trinity College Cambria, 2008.

[113] **Firestone, M.** *Kenya.* Nairobi : lonely planet, 2009.

[114] ibid

[115] **Firestone, M.** *Kenya.* Nairobi : lonely planet, 2009.

3.3 The Kenya Government: Structure and Functions

The 2010 Kenyan constitution was promulgated on the 27th of August 2010 and replaced the old constitution of 1969 that replaced the independence constitution. The 1963 independence constitution was inherited from the British *Lancaster House template* used by former British colonies. Under this constitution the British monarch, Queen Elizabeth II, was represented as head of state by a Governor-General of Kenya. The Constitution also provided for a bicameral parliament, the National Assembly, consisting of the Senate and the House of Representatives. Each province had an elected assembly[116].

In 1964, the Constitution was amended to make the country a republic with the President as both head of state and head of government, and in 1966, the membership of the Senate and House of Representatives was combined to form a unicameral National Assembly[117].

3.3.1 Structure of Government

1969 Constitution

In 1969, the independence constitution was replaced with a new one that entrenched changes already made to the system of government inherited at independence. The new constitution changed the structure of the state from a federal, or Majimbo system, to a unitary system; creating a unicameral instead of bicameral legislature; changing from a parliamentary to a semi-presidential system with a powerful presidency; and reducing the protections of the bill of rights[118].

[116] **Constitution of Kenya.** 1969.

[117] **Chitere, P, et al., et al.** *Kenya Constituition documents.* Nairobi : CHR Michelsen Institute, 2006.

[118] ibid

The constitution created three arms of government, namely, *the executive,* the *legislature* and the *judiciary*, each of which has its specific function contributing to the check and balances of operation[119].

Under the 1969 constitution, the administrative sub-divisions of the government included 47 legal districts, joined to form eight provinces. These include Nairobi province, Rift-Valley province, Central province, Nyanza province, Western province, Eastern province, Northeastern province and the Coastal province.

Further, the local government was divided into four categories: *City Council*, *Municipal Council, County Councils* and *Town Councils*. There were 175 local authorities in total, One city council, which is Nairobi, 45 Municipal councils, 67 county councils and 62 town councils[120]. The powers of establishing a county, municipal and councils were vested in the minister of Local Government. The local authorities were run in a committee-based system. Each local authority had a decision making (political) structure, headed by the Mayor and the administrative structure headed by a town or county clerk. The Local authorities' functions were divided into two by the Local Government Act. One is the Mandatory function, which involves functions that the local authorities must do under the law, example: Provision of burial sites. Two is the permissive function, which involves functions that the local authority may exercise at their own instance, and those that they may perform subject to the approval of the minister or subject to compliance with the law.

[119] **Makongo, J.** *History and Government.* Nairobi : East African Educational Publishers Ltd.

[120] **Mboga, H.** *Understanding the Local Government system in kenya: A citizens handbook.* Nairobi : Kenya Institute of Economic Affairs, 2009.

Kenya Constitution (2010)

Following the adoption of the new constitution in 2010, the structure and functions of the three arms of government slightly changed. Key changes in the new constitution include:

1. Separation of Powers between the Three arms of government i.e. Executive, Legislature and Judiciary.
2. The Executive: who holds executive authority and their qualification.
3. The Legislature: the composition, and representation of the people. An introduction of an upper house - the Senate
4. Devolution - only two levels of Government: National and Counties.

The **executive** arm of government still remains composed of the president, the deputy president and the cabinet. The president is the head of state and of government. However, he/she is not a member of parliament as it was in the previous constitution. As the head of government, the president yields executive authority, coordinates and supervises all major sections of the executive branch.

The **legislature** as expressed in the new constitution of 2010 will constitute the following:

I. An upper house, which is *the Senate*; each of the 47 counties will have a senator who is elected by the electorate[121]. According to article 145 of the 2010 constitution, the Senate will preside over presidential impeachment hearings
II. A Lower house, which is the *National Assembly*; Each of the 290 constituencies will have an elected member of parliament. In addition there will be some nominated members in the national assembly and a women representative elected by each of the

[121] **Constitution of Kenya.** 2010.

county assemblies, guaranteeing a minimum of 47 women MPs in the national assembly[122].

III. The *County Assemblies* and *Executives;* each of the new 47 counties established under the new constitution will have a county executive headed by a county Governor elected by the people and A county assembly elected with representatives from wards within the county[123].

The **judiciary** under the new constitution has three superior courts: The Supreme Court, which is the highest judiciary organ consisting of the Chief justice and his deputy and five other judges. It handles appeals from constitutional courts and will preside over presidential impeachment proceedings. Secondly, the Court of Appeal will handle the appeal cases from the High Court and as prescribed by parliament. It will constitute not less than 12 judges. Lastly, the High Court which is the superior court of records that has unlimited original jurisdiction in civil and criminal matters [124].

3.4 The Constitution of Kenya on 'Rights' of citizens, and Militia Proliferation

3.4.1 Prevention of Organized Crime Act

The Prevention of Organized Crime Act, Cap 6 of 2010 constitution, is the principal legislation on organised crime in Kenya. However, there are different Acts of Parliament that deal with the proliferation of organised crime[125] they are: the Counter-Trafficking in Persons Act, the Firearms Act, and the Proceeds of Crime and Anti-Money Laundering Act.

This piece of legislature defines a, "militia criminal group[126]" as "a structured group of three or more persons, existing for a period of time and

[122] **Constitution of Kenya.** 2010.

[123] **Constitution of Kenya.** 2010.

[124] **Constitution of Kenya.** 2010.

[125] Militia activities are what are referred to as organised crime

[126] Also referred to as criminal groups

acting in concert with the aim of - *(a)* committing one or more serious crimes […]". Their introduction also includes consistent definitions of "serious crime" and "structured group." According to the Prevention of Organized Crime Act, Cap 6 of 2010, a person engages in criminal activities when they are directly involved in the crime, advices an organised criminal group, works with a criminal group for material gains and purposes, provides leadership to a criminal group, assists any criminal group, or engages in any kind of business or investment on behalf of a criminal group. Therefore, a person is said to be in a criminal gang whether he is directly or indirectly involved with the gang.

It is of note that legislation does not guarantee its own effective application or implementation, therefore leading to policy failure.

3.4.2 The bill of Rights

The Bill of Rights enshrined in the Kenyan Constitution accords certain fundamental rights to its citizens, and outlines the responsibility of the Kenyan government to protect and respect these rights. The Constitution defines the extent and circumstances under which certain rights may be restricted by the government. Ultimately, rather than outlining how the government should deal with criminality, it serves to protect Kenyan citizens from unjustified and illegitimate "crack-downs" by government forces in their efforts to do so.

Thus, while the Prevention of Organized Crimes Act 2010 defines the response of the State to organized criminality, the Kenyan Bill of Rights places restrictions on the behaviour of the *government* and outlines its ***obligation to ensure the safety of its citizens***. In essence, the first piece of legislation targets the behaviour of criminal gangs, while the second—the Bill of Rights—details the appropriate behaviour of the Kenyan government.

3.4.3 Failure to Realise the Bill of Rights and Prevention of Organized Crime

It is important to understand the exact content and provisions of Kenya's existing legal framework for dealing with organized crime. This is in light of the many serious accusations against the Kenyan police and security forces for their failure to protect the citizens against security threats and their massive violations of human rights in Kenya's "war on crime."

It is important also to understand the extent to which these failures and violations could be allowed by gaps in the legislation—*for example*, by providing such a vague definition of criminality and criminal groups so as to "justify" the massive restriction of fundamental rights of citizens that has taken place, *versus* an error in the application or enforcement of these policies by the security authorities.

Furthermore, as the Bill of Rights and the Kenyan Constitution make clear, Kenyan civilians have a ***right*** to a certain extent of security and protection. In the event that the Kenyan security forces are unable to provide this, citizens may more or less seek protection from alternate security providers as well as the militias—an indicator of the so-called "gap hypothesis" of militia formation and proliferation. When militia groups begin to proliferate and provide services that the government ought to be providing to its citizens, then it is an indicator of a weak legislative system. Therefore, in Kenya, the existence of militia groups especially in low-income areas such as slums is clear evidence that the system of government in these areas is weak. There are 'gaps' that exist in legislation and in practice that allow for the continuous survival and operation of these militia groups in Kenya.

3.5 Proliferation of Militia in Kenya: State Policy Frameworks

Section 239 (1) of the Constitution outlines the three organs of the Kenyan national security system: ***the Kenya Defence Forces,*** the ***National Intelligence Service***, and the ***National Police Service***. These forces are explicitly prohibited from acting in a partisan manner or furthering in any way the interests of political parties [239 (3) a-c]. The Constitution also forbids the formation of any military or paramilitary organizations that operate parallel to the state in providing security [239 (4)]. In fact, the constitutionally described responsibilities of these security organs require and allow them to lead the fight against organized crime and militias in Kenya.

3.5.1 Kenya Security Architecture: *The Kenya Defence Forces and the National Intelligence Service*

Old Security Architecture

The old security architecture derives its rationale from the colonial state. The post-colonial period just tinkered with the architecture to serve the new state. Currently, the architecture is built around what is known as Kenya Security Intelligence Machinery. At the top, is the Cabinet Security Committee (CSC) chaired by the President. Below it is the National Security Advisory Committee (NSAC); the Joint Security Intelligence Secretariat (JSIS) serves as the operational arm of the NSAC Away from Nairobi, the Provincial Security Intelligence Committee (PSIC) serves the provinces while the District Security Intelligence Committee (DSIC) is operational at the district level. These are not constitutional or statutory structures. Similarly, they are not created through policy instruments. They are administrative. As such they tend to operate in an *ad hoc* manner. The diagram below illustrates the various levels of these structures.

(Source: The Consulting House. In: Ngunyi et al (2010). Re-engineering the National Security Architecture. Nairobi: The Consulting House)

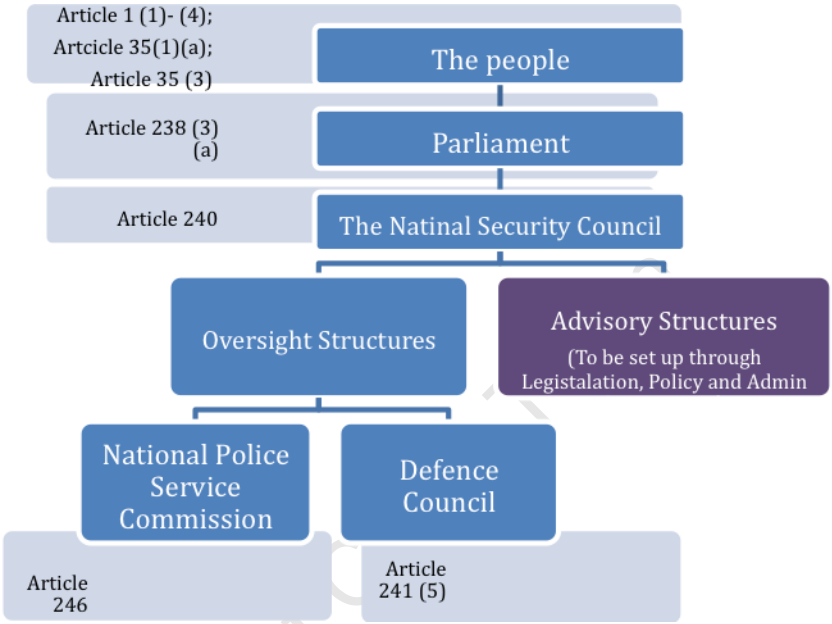
With regard to **the Defence Forces**, the Armed Forces Act of 1968 provided the military a *supplementary* role of supporting civil institutions. The new architecture conceives this differently as this study shall show later. On its part, the military created two commands: the East and West Com. But these were not aligned with the internal security structures on the ground. Internal security structures, including the regular and administration police force, Kenya Wildlife Services, and Kenya Forest Services, operate through an administratively created command. The multiplicity of these units has resulted in command and control issues, resulting in tensions among them. In addition, their deployments consistently distort the force to space ratios and the ability to provide security[127]

New Security Architecture

The new National Security Architecture proposed in the new constitution has the People at the top as shown by diagram 2 below. **Article 1(1)** of the new constitution clearly stipulates that: "… (ALL) sovereign power

[127] **Ngunyi, M et al.** *Re-engineering the national Security Architecture.* nairobi : The Consulting House, 2010.

belongs to the people of Kenya and shall be exercised only in accordance with this constitution". This re-affirms citizen centrality in state security as the first object of securitization. But the people sovereignty is exercised through their representatives[128]



(*Source:* *The Consulting House. In: Ngunyi et al (2010). Re-engineering the National Security Architecture. Nairobi: The Consulting House)*

Gaps in the Security Architecture

Under **Article 238(2) a** of the new 2010 constitution "... National security is subject to authority of the Constitution and parliament". This means that the people will delegate their supreme power to parliament. Unlike in the past where the National Security Organs were responsible to the Executive, the 'line management' has shifted to parliament, acting on behalf of the people[129]. This is represented in the diagrams above.

Therefore, the new security architecture removes decision-making powers from a singular structure (executive) to a monolithic structure (Parliament). This means that multiple interests will be at play in

[128] **Ngunyi, M et al.** *Re-engineering the national Security Architecture.* nairobi : The Consulting House, 2010.

[129] **Ngunyi, M et al.** *Re-engineering the national Security Architecture.* nairobi : The Consulting House, 2010.

deciding on critical issues such as deployment and appointments[130]. In this regard, an implementation gap still exists in the security architecture. This means that, the new security architecture, just like the old one, will not function properly. While there will be delays in making decisions of security matters in the country, such as deployment of security officials in the community, the militia groups will take this opportunity to provide this service to individuals and communities.

Therefore, the poor functioning of the state security architecture leads to the rampant rise and proliferation of militia groups. They rise to provide protection to the communities and meet the needs of the people that the government ought to be addressing but are delaying due to weak structures.

Therefore to avoid this gap, policies and administrative interventions should be aligned in such a way as to avoid deployment delays in provision of security and other services to the citizens by the government. Otherwise, militia groups will continue to exist and provide services in place of the government.

3.6 National Police service

The National Police Service consists of the Kenya Police and the Administration Police (Constitution, Section 243). While there are operational differences between these two branches, there are also many similarities both in legislation and in practice. The Kenyan Criminal Procedure Code (Chapter 75, Section 2) states that "Police Officer" shall refer to an officer of both the Kenyan Police Force and the Administration Police. Similarly, the Kenyan Penal Code (Chapter 63) states that the "Police Force" shall include both the Kenyan Police and the Administration Police. Among other things, police required to respect human rights and fundamental freedoms (Constitution, Section 244).

[130] ibid

3.6.1 Kenyan Police Force

The functions of the Kenyan Police Force are outlined by the Police Act of 1961 (Chapter 84), in conjunction with the Police Regulations of 1961 (which were incorporated into the 1988 revised edition of the Police Act) and the Standing Orders, which were most recently revised in 2001[131]. The Standing Orders provide general instructions for behaviour and are issued by the General Commissioner of Police. Section 14 of the Police Act (1988) lists the functions of the police, which include the maintenance of law and order, preservation of the peace, protection of life and property, *prevention and detection of crime*, apprehension of offenders, and the enforcement of all laws and regulations with which the Force is charged. The police are also mandated to regulate traffic (S 26, 27) and to maintain public order (16.1). However, it is interesting to note that the police force is legally allowed to be privately hired[132]

The vision of the Kenya Police is: "…To be a world-class Police Service, with a people-friendly, responsive professional workforce". The Mission of the Kenya Police is: "…to provide quality Police service to the Kenyan Public; by upholding the rule of law and creating and maintaining strong community partnerships conducive to social, economic and political development in Kenya"[133]

An initial search for the overall size of the Kenyan Police Force yields no results, however, information for certain districts is available. The Kenyan Police force is divided into eight policing provinces, which are then subdivided into divisions. Combined with the 12 specialized "formations," there are 20 departments in all[134]. Rift Valley Province is the largest in terms of policing, and has 22 police divisions, 91 police stations, and

[131] **Section 5, Police Act (1988).** s.l. : Commonwealth human Rights Initiative, 2006:12.

[132] **Section 45, part V of Regulations.** s.l. : Commonwealth Human Rights Initiative, 2006:14.

[133] **Section 45, part V of Regulations.** s.l. : Commonwealth Human Rights Initiative, 2006:14.

[134] **Kenya police Act.** 1988.

personnel of 4,277 for a population that is expected to be over 9 million people[135]

3.6.2 Administration Police

The Administration Police is a parallel force within the National Police Service. This branch was established by the Administration Police Act of 1958 during colonial rule, and is subject to its own Standing Orders[136]. Originally a tool of "control" over indigenous people, the Administration Police force was moved to the Office of the Prime Minister, and later the President, at Kenya's independence[137]. The Administration Police report to the Minister of Internal Security, through local provincial heads. A Police Commandant heads them, and there are eight Provincial Commands and three units: the Administration Police Training College, the Security of Government Buildings Unit (SGB), and the Rapid Deployment Unit (RDU).[138] According to one evaluation, there are currently approximately 18, 000 Administration Police officers. The vision of the administrative police is: to be the leading community safety provider with a focus on quality service to the public. Their mission is: The Administration Police exists to contribute to National Development through provision of sustainable peace and tranquillity to all people in Kenya[139]

The primary piece of legislation regarding the Administration Police is the same document that founded them—the Administration of Police Act of 1958 (Chapter 85). However, numerous other Kenyan laws – Chapters 63, 75, 85, 128—outline the function and purposes of the force. The responsibilities of the Administration Police include: executing orders

[135] **Kenya police Act.** 1988.

[136] **Van der Spuy, Elrena and Röntsch, R.** *Police and crime prevention in Africa: a brief appraisal of structures, policies and practices. Thematic Analysis Report, International Centre for the Prevention of Crime (ICPC), Cape Town, South Africa. In .* Cape Town : s.n., 2008.

[137] **Van der Spuy, Elrena and Röntsch, R.** *Police and crime prevention in Africa: a brief appraisal of structures, policies and practices. Thematic Analysis Report, International Centre for the Prevention of Crime (ICPC), Cape Town, South Africa. In .* Cape Town : s.n., 2008.

[138] **Section 5, Police Act (1988).** s.l. : Commonwealth human Rights Initiative, 2006:12.

[139] **Kenya police Act.** 1988.

and warrants, preserving the public peace, assisting Government officers in the exercise of their lawful duties, *preventing the commission of offences and apprehending offenders*[140]. Like the Kenyan Police, the Administration Police can be privately hired

3.6.3 Community Policing Strategies

Since 2003, the Government of Kenya and other agencies have embraced "community policing" as a core crime prevention strategy especially against the militia operations in the community[141]. The official website of the Administrative Police quotes the United Nations on aspects of community policing and democratic policing, and while it doesn't specify exactly what its role will be vis-à-vis these partners, it emphasizes the key role of creating partnerships for information-sharing and collaboration[142]

The Kenya Police Force is clearer in its approach to community policing, and more explicitly recognizes this strategy as a means towards reducing crime[143]. As prescribed by the constitution of Kenya, the role of the Kenya Police is to help create Community Police Forums (CPFs), while communities are to supplement police patrols with private guards and neighbourhood watch programs. An evaluation of police and crime prevention in Kenya summarizes the primary crime prevention activities of parties involved in community policing as: visible policing, informal community surveillance and neighbourhood watch activities; as well as

[140] **Van der Spuy, Elrena and Röntsch, R.** *Police and crime prevention in Africa: a brief appraisal of structures, policies and practices. Thematic Analysis Report, International Centre for the Prevention of Crime (ICPC), Cape Town, South Africa. In* . Cape Town : s.n., 2008.

[141] **Kenya police Act.** 1988.

[142] **Van der Spuy, Elrena and Röntsch, R.** *Police and crime prevention in Africa: a brief appraisal of structures, policies and practices. Thematic Analysis Report, International Centre for the Prevention of Crime (ICPC), Cape Town, South Africa. In* . Cape Town : s.n., 2008.

[143] **Van der Spuy, Elrena and Röntsch, R.** *Police and crime prevention in Africa: a brief appraisal of structures, policies and practices. Thematic Analysis Report, International Centre for the Prevention of Crime (ICPC), Cape Town, South Africa. In* . Cape Town : s.n., 2008.

setting up CPFs[144]. The role of the police is consistently to maintain law and order.

3.7 Summary

The constitution of Kenya has been a major point of contention since Kenya gained its independence in 1963. The independence constitution was replaced by the 1969 constitution, which was recently replaced by the Kenya constitution of 2010. In this chapter we have explored how these changes affected the system of government i.e. it legislative and administrative arms. We further looked at the existing security frameworks dealing with militia in Kenya; The *security architecture* and the *police force*.

We have seen that historically indigenous inhabitants of the land now called Kenya existed in harmony. However the advent of the state government inherited from the British colonial powers brought with it the competition for power. This created tribal rivalry as both the 1st and 2nd presidents of the Republic of Kenya sort to create ethnic elite. This was the genesis of ethnic affiliated criminal gangs both adhoc and organized as they fought for control over urban property, land or petty trade.

Further, we examined the old and new security architecture, structure of the local and central government, as well as the police force. This examination exposed the inadequacies of the existing security architecture in Kenya as well as its inadequacies in dealing with organised criminal groups. Due to the poor functioning of the legislative, administrative and security systems in Kenya, a vacuum in service delivery by the government has been created. The illegal groups aforementioned have arisen and operate in this vacuum. This analysis with relation to service delivery is explored in greater detail in the next chapter.

[144] ibid

4. THE RISE OF MILITIA IN KENYA

4.1 Introduction

This chapter aims to respond to the first research question of this study: "…*Is the proliferation of organic and organized criminal groups in Kenya a function of state policy failure?*"

In the past few decades, there has been an increase in militia emergence and activities around the world. Africa is host to many of such groups, with the most affected countries being Somalia, Democratic republic of Congo, Sudan and Nigeria[145]. Kenya has also been affected by the proliferation of these militia groups especially among the poor populace where poverty, unemployment, marginalisation, ethnic inequalities, economic disparity, and unequal distribution of national resources and services are commonplace[146].

This chapter will investigate the emergence of these groups in Kenya, and their spread. We will look at the change in demographics in Kenya over the years, growth of slums and the declining rate of service delivery among the urban poor. This will help us see if these have contributed to the proliferation of organic and organized criminal groups in Kenya. We will use the Mungiki and Sabaot Land Defence Force (SLDF) as case studies to investigate the formation and activities of these groups. Our focus will be on whether the ineffectiveness of the government to deliver services has created a gap in which these groups can operate as they emerge as alternative service providers.

[145] Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

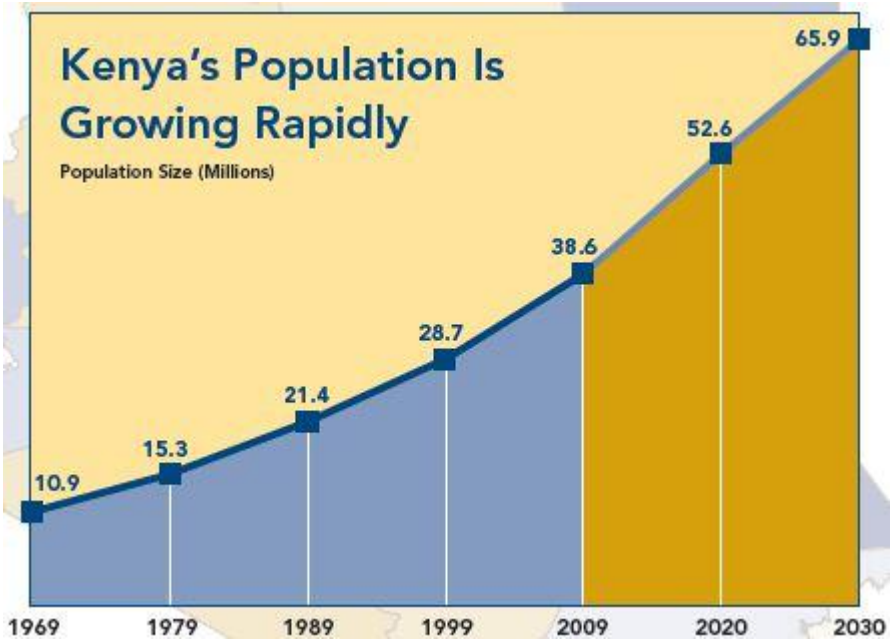
[146] Ibid, pp 147

4.2 Demographics

a. Population Growth

Kenya's population growth has grown exponentially over the years. Kenya is experiencing an annual growth rate of over 1 million per year causing an imbalance in population growth as compared to the national economic growth rate. According to the 2009 population census Kenya's total population stood at 38,610,097 compared to only 6 million in 1950. The total population increased to 15.3 million in 1979 to 21.4 million in 1989, to 28.7 in 1999 and to 38.6 million in 2009 as illustrated in the figure below[147].

Figure 4: Population Growth since Independence



(source: Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi: TCH)

The 2009 Census data revealed that Kenya like most African countries suffers a high rate of infant mortality, low life expectancy and high rate of lack of services for many of the urban poor and rural populations. This high rate of population growth has adverse effects on the governments spending

[147] Olum, G.H. Report on Status and Implementation of National Policy on Ageing in Kenya: Prepared for UNDESA. Kenya: UNDESA

on infrastructure, health, education, environment, water and other social and economic sectors.

b. Urbanization and Slum formation

A direct consequence of this growth in population has been an increased rate of urbanization and by extension slum formation in Kenyan cities and towns as well as other African countries. It is interesting to note that the world is now midway through the so-called 'second urbanization wave', which is expected to result in the urbanization of nearly 4 billion people in less than a century (1950 - 2030). The large majority of the additional 3 billion people expected to be living on earth by 2050 will more than likely end up in Asian and African cities if current trends continue[148]. Urbanization rates in Africa are the highest in the world at 3.3%[149], and if Africa is to go from 40% to 60% urbanized by 2050, urban populations will increase from the current 373 million to 1.2 billion[150].

The main challenge presented by the second wave of urbanization for Nairobi and other developing countries' cities is the proliferation of slums as cities struggle to meet the demands of growing populations. According to a UN Habitat report entitled *The Challenge of Slums,* there were a billion people living in slums by 2003. In other words, by 2003 a third of the people living in the cities of the world lived in a slum[151]. The report defines a slum as a settlement made up of households that lack one or more of the following conditions: access to improved water, access to improved sanitation facilities (minimally, a pit latrine with a slab), sufficient living area (not more than three people sharing the same room), structural

[148] Swilling, M., B. Robinson, S. Marvin & M. Hodson (2011) 'Growing Greener Cities.' Discussion paper commissioned by UN Habitat for Expert Group Meeting in Nairobi, 16-19 February, 2011

[149] UN Habitat. (2008). *The State of African Cities 2008: A Framework for Addressing Urban Challenges in Africa*. Nairobi: United Nations Human Settlements Programme.

[150] ibid

[151] Swilling, M., B. Robinson, S. Marvin & M. Hodson (2011) 'Growing Greener Cities.' Discussion paper commissioned by UN Habitat for Expert Group Meeting in Nairobi, 16-19 February, 2011

quality and durability of dwellings, and security of tenure[152].

Slums present a particularly significant problem for Africa's cities. Although half of the world's slum dwellers are in Asian cities, it is only in sub-Saharan Africa that one finds cities where the majority of the populations live in slums. In Kenya, the first squatter settlements emerged during the colonial period when the colonial administration discouraged the provision of large-scale public housing for the African population in order to curtail the influx of Africans into Nairobi[153]. When the restriction of the migration of Africans to Nairobi was lifted following independence the population in Nairobi increased from 350,000 in 1963 to 4 million inhabitants today[154]. The increasing demand has not been matched by a well-planned provision of adequate housing and basic government services[155].

Therefore the growth of informal settlements and poor service provision by the government has accompanied the growth of the population. In part the failure of government authorities to provide access to land, housing and services to the growing number of residents can be attributed to the lack of financial resources and poor management[156]. However, this lack of finance and management failures is also an endogenous outcome of poor policies. A critical priority for the international community and African Governments has then become to reconsider what actions will be required now to ensure effective services for slum populations that may increase by an additional

[152] United Nations Centre for Human Settlements. (2003). *The Challenge of Slums: Global Report on Human Settlements*. London: Earthscan.

[153] Obudho, R. A. and G. O. Aduwo. (1989). Slums and squatter settlements in urban centres of Kenya: Towards a planning strategy. *Netherlands Journal of Housing and Environmental Research* 4(1): 17- 29.

[154] K'Akumu, O.A. and Olima W.H.A. (2007).The dynamics and implications of residential segregation in Nairobi. *Habitat International* 31: 87–99.

[155] Dafe, F. (2009). No Business like slum business? The Political economy of continued existence of slums: A case study of Nairobi. London: Development studied institute, LSE

[156] Syagga, P., Mitullah W. and Karirah-Gitau S. (2001). *Nairobi Situation Analysis Consultative Report*. Nairobi: Collaborative Nairobi Slum Upgrading Initiative, Government of Kenya and United Nations Centre for Human Settlements (Habitat).

800 million inhabitants[157].

4.3 Service Delivery

4.3.1 The Government of Kenya

During the first decade of independence in Kenya, the Growth Domestic Product (GDP) grew by an average of 6.6%[158]. This growth was due to successful rural development policies, import substitution industrialization strategies among other factors. However, the period that followed showed a decline in the economy with a growth rate of 2.5 and 2.0 per cent in 1990-1995 and 1996-2000 respectively. This poor performance was mainly due to poor governance, poor infrastructure, depressed investment, decline in donor support, increase in population, as well as introduction of multi party democracy in Kenya[159].

The poor economic performance over the past two decades exacerbated the difficulties facing Kenyans. There has been reduction in real expenditure on basic social services namely health and nutrition, education, water and sanitation, which are essential for poverty reduction. Over the period 1980-1997, real expenditures in these services declined from about 20 per cent of the government budget in 1980 to about 12.4 per cent by 1997. On education, the decline was from 23 per cent to 19 per cent; on health and nutrition it was from 10 per cent to 6 per cent[160]. This is shown in the table below.

[157] Swilling, M., B. Robinson, S. Marvin & M. Hodson (2011) 'Growing Greener Cities.' Discussion paper commissioned by UN Habitat for Expert Group Meeting in Nairobi, 16-19 February, 2011

[158] Olum, G.H. Report on Status and Implementation of National Policy on Ageing in Kenya: Prepared for UNDESA. Kenya: UNDESA

[159] ibid

[160] ibid

Table 2: AVERAGE ANNUAL GROWTH OF REAL GDP PER SECTOR[161]

SECTOR	1964-1973	1974-1979	1980-1989	1990-1995	1996-2000
AGRICULTURE	4.6	3.9	3.3	0.4	1.1
MANUFACTURING	9.1	10.0	4.8	3.0	1.3
FINANCE, REAL ESTATE	9.8	12.4	6.7	6.6	3.6
GOVERNMENT SERVICES	**16.9**	**6.5**	**4.9**	**2.6**	**1.0**
PRIVATE HOUSE HOLDS	3.5	14.5	10.8	10.3	5.6
OTHERS	-	8.8	7.7	3.6	2.3
TOTAL GDP	6.6	5.2	4.1	2.5	2.0

(SOURCE: Olum, G.H. Report on Status and Implementation of National Policy on Ageing in Kenya: Prepared for UNDESA. Kenya: UNDESA)

As the table above indicates, the increase in population since independence has led urbanization and slum formation in the cities and eventually the increase in demand of government services. However, according to the statistics, the government is unable to match up to this increase in demand of its services, leading to poor performance in the various sectors. Further, according to a report published annually by the Foreign Policy Magazine and the fund for peace, Kenya ranks 16 in the failed state index for 2012[162]. According to this report, Kenya scores 8.9% with regards to demographic pressures, 8.1% with regards to poor public services and 7.3% with regards to economic decline. These scores together with other variables used such economic stability, refugee status/IDPs, and security contributed to Kenya

[161] **SOURCE**: Olum, G.H. Report on Status and Implementation of National Policy on Ageing in Kenya: Prepared for UNDESA. Kenya: UNDESA

[162] Source: Foreign Policy Online Magazine. Available at: http://www.foreignpolicy.com/failed_states_index_2012_interactive

being ranked highly as a failed state. A sample of this is represented in the table below.

Table 3: Kenya's Rank in the in failed State Index of 2012

Rank	Total	Country	Demographic P	Refugee/IDPs	Group	Human Flight	Uneven Development	Economic	Delegitimization of the State	Public Services	Human Rights	Security Apparatus	Factionalized Elites	External Intervention
16	98.4	**Kenya**	8.9	8.4	8.9	7.7	8.2	7.3	8.6	8.1	7.4	7.6	9.0	8.4

Sample Source: Foreign Policy online magazine. Available at: http://www.foreignpolicy.com/failed_states_index_2012_interactive

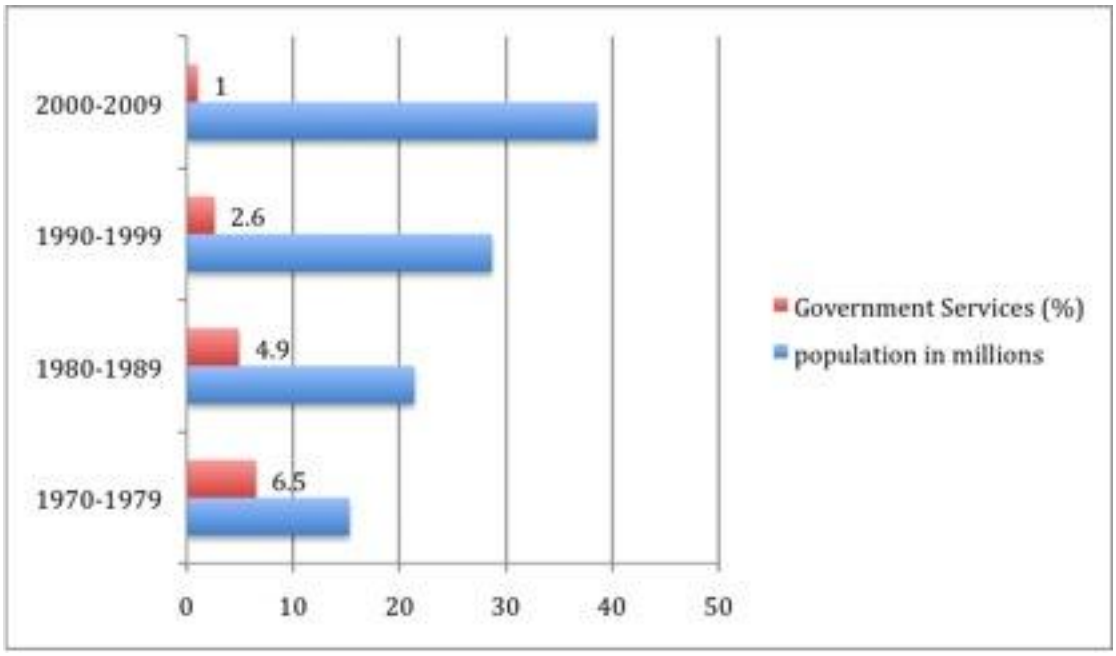
This shows that government is unable to meet the needs of all the population in the country due to its poor management and financial capacity, and poor policies. The increasing demand has not been matched by a well-planned provisional capacity by the government.

From these statistics, it is evident that Kenya entered the 21st century with a formidable challenge of reversing declining economic growth, generating employment opportunities, reducing both unemployment and poverty among the people. However it is imperative to note that the government has put up policy measures to address these socio-economic challenges. These include the National Poverty Eradication Plan (NPEP)-1999-2015; Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC) 2003-2007 and the short term Poverty Reduction Strategy Paper (PRSP) 2001-2004[163].

Despite having these policies in place, the government services have increasingly declined since the 1970's to 2000's. This is shown in the graph below.

[163] Olum, G.H. Report on Status and Implementation of National Policy on Ageing in Kenya: Prepared for UNDESA. Kenya: UNDESA

Figure 5: Decline of Government Services



Service Provision: 2009 Census Data

Water:

Water is a crucial basic human need for survival, and whose availability enhances economic growth. The table below shows the availability of water (% households) according to the 2009 Kenya census.

PROVINCE	Pond/Dam/ Lake	Piped	Stream	Spring / Well / Borehole	Jabia / Rain /Harvested	Other
KENYA (TOTAL)	5.1	30.0	21.6	35.4	1.1	6.8
NAIROBI	0.3	75.7	0.1	7.2	0.2	16.5
CENTRAL	1.6	39.8	26.0	25.1	2.6	5.0
COAST	8.2	46.3	7.1	25.4	0.6	12.3
EASTERN	4.1	28.5	28.8	31.1	0.7	6.7
N- EASTERN	16.3	11.6	5.1	51.5	2.5	13.0
NYANZA	12.8	8.5	29.9	45.3	0.9	2.5
RIFT VALLEY	4.7	22.8	29.3	36.3	1.2	5.5
WESTERN	1.2	7.0	16.8	73.8	0.4	0.8

Sanitation:

Poor sanitary conditions impact on prevailing health standards of local people and hence development. The table below shows the main mode of human waste disposal in Kenyan households (% households)

PROVINCE	Main Sewer	Septic Tank	Cess Pool	Pit Latrine	Bush	Other
KENYA (TOTAL)	7.7	3.4	0.3	74.5	13.6	0.5
NAIROBI	47.7	9.7	1.1	40.3	0.4	0.8
CENTRAL	3.8	5.0	0.3	90.5	0.2	0.1
COAST	5.8	7.8	0.8	60.5	24.3	0.8
EASTERN	1.6	1.7	0.2	85.6	10.7	0.2
N- EASTERN	0.4	0.4	0.1	33.3	63.0	2.7
NYANZA	1.3	0.7	0.1	80.1	17.5	0.3
RIFT VALLEY	3.3	2.2	0.2	73.3	20.7	0.2
WESTERN	0.9	0.7	0.1	95.2	2.9	0.3

Inequalities in service Provision

Access to basic public services especially in Nairobi's slums is low. Less than one fifth of the slum households have access to piped water, that is private in-house connections or yard taps. The vast majority of slum dwellers rely on water kiosks to buy water from private providers[164]. In the contrary, studies reporting data for Nairobi as a whole place the proportion of households with access to piped water at 71 percent[165]. This representation is not true for slum households.

This inequality in access to basic services also applies to electricity connections. About 22% of slum households in Nairobi slums are connected to electricity and uses it as a lighting fuel. This is about one in every five households in Nairobi slums. In contrast, Nairobi city as a whole records an average of 52% of electricity connections in households[166]. With regards to garbage, less than one in a hundred slum-households, which is about 0.9% of slum households are served by a public collection system despite the negative externalities of garbage[167].

[164] Dafe, F. (2009). No Business like slum business? The Political economy of continued existence of slums: A case study of Nairobi. London: Development studied institute, LSE

[165] Gulyani, S., Talukdar, D. and Kariuki, M. (2005). Universal (Non)service? Water Markets, Household Demand and the Poor in Urban Kenya. *Urban Studies* 42(8): 1247–1274

[166] Gulyani, S., Talukdar, D. and Potter, C. (2006). *Inside Informality: Poverty, Jobs, Housing and Services in Nairobi's Slums*. Report No. 36347-KE, Africa Water and Urban Unit 1. Washington, DC: World Bank.

[167] ibid

Due to Nairobi's spatial segregation according to income these exemplary figures illustrate that residents of higher income areas are provided with better infrastructure services than the urban poor living in the slums[168]. The government justifies this by the fact that slums are informal settlements and that the delivery of services would be equivalent to their official recognition[169].

However, what casts doubt on the official justification is that public officials in Kibera slums in Nairobi tend to divert available water from the existing piped network to neighboring high-income areas where both revenue collection and political influence are greater[170]. This suggests that, the better service delivery coverage of high-income areas results from successful lobbying of higher income groups[171]. Therefore, if slum dwellers could access reasonable quality services at affordable price from alternative providers, they would not loose from the lack of public services' provision.

4.3.2 Private Service Providers

Private agents have partly filled the gap left by public service providers in Nairobi slums. As a result, slum dwellers have to pay high prices for water, which is often contaminated, for electricity, private garbage collection among other services[172]. The low coverage of electricity of a private garbage collection system indicates that slum households are unwilling or unable to pay for commercial providers[173].

[168] Dafe, F. (2009). No Business like slum business? The Political economy of continued existence of slums: A case study of Nairobi. London: Development studied institute, LSE

[169] Wegelin-Schuringa, M. and Kodo, T. (1997). Tenancy and sanitation provision in informal settlements in Nairobi. *Environment and Urbanization* 9(2): 181-190

[170] Mehrotra, S. (2005). Rogues No More? Water Kiosk Operators Achieve Credibility in Kibera. WSP Field Note. Nairobi: World Bank.

[171] Dafe, F. (2009). No Business like slum business? The Political economy of continued existence of slums: A case study of Nairobi. London: Development studied institute, LSE

[172] Mehrotra, S. (2005). Rogues No More? Water Kiosk Operators Achieve Credibility in Kibera. WSP Field Note. Nairobi: World Bank.

[173] Gulyani, S., Talukdar, D. and Potter, C. (2006). *Inside Informality: Poverty, Jobs, Housing and Services in Nairobi's Slums*. Report No. 36347-KE, Africa Water and Urban Unit 1. Washington, DC: World Bank.

Many of the Community Based Organizations -operated pay- per-use latrines have deteriorated over time due to maintenance problems. However, the lack of alternatives in the slums has turned private service provision into a profitable business[174]. Water kiosk owners, in particular, can earn high revenues. Slum households pay on average KES 100/m3 (US$1.33/m3) at water kiosks. This is eight times the price of the lowest tariff block for domestic connections.

The deliberate exclusion of informal settlements from public services and the inability of slum dwellers to afford alternative private service provision have led to the emergence of a third group of service providers- *the militia*. These are small youth groups that have come together to provide those services to the community that the government has failed to provide. These include water, sanitation, electricity and security. They fill in the gaps left by public service providers and private commercial service providers. Since the slum dwellers cannot afford alternative services provided by private agent, these militia groups provide these services illegally but at a lower cost.

This proliferation of militia groups especially in informal settlements is as a result of poor governance, which has led to increase in poverty, unemployment, marginalization, ethnic inequalities, economic disparity and unequal distribution of natural resources and services[175]. However, it is important to note that these militia groups existed way before the decline of government services in Kenya. It is the agenda and activity of these groups that has changed since the 1980's to today.

[174] Huchzermeyer, M. (2008). Slum Upgrading in Nairobi within the Housing and Basic Services Market. A Housing Rights Concern. *Journal of Asian and African Studies* 43(1): 19–39.

[175] Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

4.3.3 Illegal Service Providers

The exclusion of informal settlements from public services and the inability of slum dwellers to afford alternative private service provision have led to the emergence of a third group of service providers- *the militia* (Organic and organized criminal groups). These are often youth groups that have come together to provide those services to the community that the government has failed to provide and are too expensive to source from private service companies. These include water, sanitation, electricity and security. These groups provide these services illegally but at a lower cost. Details of how these groups operate are discussed in the 2 case studies below under the activities and operations of the Mungiki and the SLDF.

4.4 The rise of militia in Kenya

The rise of militia groups in Kenya can be historically traced back to the youth wing of the former ruling party KANU[176]; famously known as the KANU youth Wing, or the 'Youth Wingers'. In the 1960's the KANU youth wing was used to intimidate political opponents-such as KADU[177], and KPU[178], which were campaigning against the ruling party. In the 1980's, politicians used the KANU youth wing as a violent gang of supporters, generally of the same ethnic group[179]. The young people were paid and offered incentives and jobs as tokens for their gang support for politicians. All elections during this one party era witnessed the youth wingers being hired by politicians to harass and disrupt the opposition's rallies. The KANU youth wingers therefore served as breeding ground for the rise of militia and criminal gangs in Kenya[180].

Thereafter, during the multiparty period, the youth wingers transformed themselves into criminal gangs and militia groups with the objective of

[176] Kenya African National Union

[177] Kenya African Democratic Union

[178] Kenya People's Union

[179] Wamucii, P. (2010). HSRC Review. Youth (in)Security: Lessons from Kenya. 8(2)

[180] Adams Oloo. (2010). Marginalisation and Rise of Militia Groups in Kenya. In , Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

violently intimidating and disenfranchising the opposition supporters, especially those in the 'KANU areas'. As a result, other criminal gangs started emerge to protect their own ethnic groups from this violence. This was instrumental in the formation and rise of the Mungiki post 1992 elections. They formed to protect the Kikuyu from the violence that had erupted in the Rift valley region to rid Rift valley of outsiders[181].

In 1997, the youth wingers, who had now transformed into the 'Kalenjin Warriors' and the 'Maasai Morans' were being trained and armed in the coastal provinces by prominent politicians and with the support of the government and the military. They were then deployed to fuel ethnic violence in the run-up to the 1997 elections[182]. As a result, opposition sponsored criminal groups-such the Jeshi la Embakasi, Baghdad Boys etc, started to emerge to protect the opposition parties from the state sponsored militia groups during election campaigns. This led to the rise of various non-state militia groups in various parts of Kenya.

According to a study done for the UNDP on the "Law of Gang Polarity", every time a dominant gang emerges in a locality, a counter-force emerges[183]. In the case of Mungiki for both Nairobi and Eldoret, the counter-force is Taliban. In Mombasa, the polarity is between MRC[184] and Sungu Sungu. And in all these cases, the counter-force seems to have a higher level of community legitimacy compared to the core-militia.

[181] ibid, pp 150

[182] ibid, , pp 150

[183] Study done for UNDP by the consulting House: Ngunyi et al (2011). From Monopoly to Oligopoly of Violence-Militia Report. Nairobi:TCH

[184] Mombasa Republican Council

The flow, therefore, is as follows: a dominant group emerges, a counter-force to oppose it is birthed by community, and then the counter-force becomes the dominant militia with time. This is how the vigilante groups opposed to Mungiki were formed. The Taliban, for instance, was formed in 2001 as a counter- force to Mungiki in the slums of Eastlands, Nairobi. There were ethnic undercurrents at the time of formation, with Taliban largely recruiting from the Luo community in these areas, who felt harassed and exploited by the 'Kikuyu' Mungiki. In 2002, the two groups clashed violently over control of the transport sector in Mathare, a battle that Mungiki prevailed by use of sheer numbers and brutal tactics[185]. In the aftermath, 21 people were reported dead with scores of others injured and it resulted in a blanket ban on 18 armed groups among them both *Mungiki* and *Taliban*[186]. In 2007, the confrontation between the two groups assumed political overtones with *Taliban* allegedly allied to ODM and *Mungiki* affiliated to PNU[187]. The table below is a small sample of the different militia groups present in Kenya today, their areas of operation and activities.

[185] Integrated Regional Information Networks (IRIN). 14 March 2002. "Kenya: Police Target Illegal Gangs after Kariobangi." (Africa News/NEXIS)
[186] East African Standard (EAS). (22 August 2002). "Kenya: A-G Orders Arrest of Mungiki Followers." (Africa News/NEXIS) also Integrated Regional Information Networks (IRIN 9 March 2002. "Kenya: Police Name Outlawed Groups." (Africa News/NEXIS)
[187] International Crisis Group (ICG) Crisis Group Africa Report N°137, 21 February 2008 , Kenya in Crisis

KNCHR, 2008: On the brink of the precipice: A Human Rights account of Kenya's post-2007Election violence

Table 4: Criminal Groups and Militia Gangs in Kenya, Areas of Operation and Activities

CRIMINAL GANG	AREAS OF OPERATION	OBJECTIVE/ACTIVITIES/EFFECT
Sabaot Land Defence Force	Mt. Elgon area, Chebyuk III settlement scheme	Civilian atrocities, Cattle rustling, 600 deaths, Extortion
Mulungunipa/ Mombasa republican council (MRC)	Kwale	Combat Training,Attacks on tourists and wealthy Caucasian expatriates, Illegal arms purchases from Somalia
Kaya Bombo Raiders	Kwale, Likoni, Kaya Bombo forest, south coast, Similani Caves	Oathing, August 13 Likoni attacks on administration buildings and market stalls operated by upcountry vendors Raid on Likoni Police station/ Ferry Post
Mungiki	Kiambu District, Nairobi Province, Naivasha, Nakuru, Molo, Rongai, Laikipia (ol Jabit)	Extortion racketeering[188] Mass murder and targeted Killings Kidnappings Post Election Violence

(Source: The Consulting House: Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi)

[188] This includes illegally providing government services to the community

CRIMINAL GANG	AREAS OF OPERATION	OBJECTIVE/ACTIVITIES/EFFECT
Sungu Sungu	Nairobi, Rift valley	Political Violence
Chinkororo	Kisii, Sotik, Bure	Armed engagements with Kalenjin warriors in PEV Retaliatory cattle rustling attacks Alleged Election violence
Kalenjin Warriors	Trans Nzoia, Kericho, Bomet, Borabu/Sotik border, Uasin Gishu	Attacks and evictions of non-Kalenjin communities during PEV
Baghdad Boys	Kisumu, Kibera	Kisumu PEV Lootings Dec 2007
Jeshi la Mzee/ Kamjesh	Kangemi, Kawangware	Extortion/ Protection racketeering targeting public service operators Election violence
Jeshi la Embakasi	Embakasi	Political Violence and Intimidation
Taleban	Nairobi, Eastlands, Mathare, Huruma, Baba Dogo, Kariobangi North, Kariobangi South, Kasarani	Extortion of public service operators on juja road
Siafu	Kibera	Tenant eviction during PEV Control of slum housing, utilities, sanitary facilities, illicit brews
Thaai	Nairobi North, Mathare	Security', Solving disputes
Bukhungu	Mashimoni, Lindi, Kibera	Tenant eviction during PEV Control of slum housing, utilities, sanitary facilities,
Al Shabaab	North East Kenya, Garissa, Wajir, Mandera, Eastleigh, South 'B', KariobaNgi/Kariokor	Recruitment of combatants from Somali-dominated refugee camps Money laundering Arms smuggling Revenue raising through Tax evasion Proceeds from piracy activity

(Source: The Consulting House: Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi)

NB: *The table above is only a sample of the total number of militia groups in Kenya, no criteria of selection was used.*

Most of the Militia groups in Kenya have an ethnic orientation, even though this is not their main reason for their formation. This is attributed to the fact that most regions in Kenya are ethnically populated. For example, the central province is home for the Kikuyu, the Nyanza Province is home for the Luo while the Rift valley is home for the Kalenjin. In addition, in the urban areas, most slums end up being multi-ethnic. This therefore explains why there has

been an increase in ethnic violence in Kenya. Most of the militia groups form to protect their own ethnic interests in the community. As a result, counter-ethnic groups begin to emerge and violence erupts between the two opposing militia groups. Even during elections, the politicians use some of these ethnic militia groups to gather support from their ethnic community. Therefore, non-state ethnic militias are the most common type of militia groups in Kenya.

Nevertheless, ethnicity is not the main reason for the formation of militia groups in Kenya. Poverty and social exclusion of communities from mainstream service provision in slum areas by the government is one of the driving forces for the proliferation of militia groups in Kenya. As this study has analysed in this chapter, the increase in population, especially in the urban areas, has a direct correlation with the decrease in government services. This is due to the fact that government policies have not been efficiently reviewed and revised to adapt to the increase in population. Therefore, the old policies that were used to govern a smaller percentage of population are still the same ones governing the enormous increase in numbers. This automatically leads to poor financial management by the government, which ultimately affects how government distributes basic services to the people. The demand for basic services is more than the supply. As a result, the needs of the populations end up not being met by the government.

Despite the fact that there are over 30 militia groups in Kenya, the most dominant groups are six in number-commonly known as the 'Big Six'. Mungiki is the most dominant, with its presence felt in almost all the counties in Kenya. It has various variations such as the Thaai, Mukuru kwa Njenga, among others. It is involved in 'soft insecurity'[189] tasks such as offering protections services to the slum dwellers, and providing services such as electricity that the government has failed to provide in the high-density

[189] *"…Soft insecurity is the kind of insecurity that has the support of the population but at the same time is a threat to the government"*. Soft insecurity in Kenya has mainly risen in response to policy failures' to deliver the basic needs in the society.

areas. The second is the Taliban. Unlike the Mungiki, they have a better acceptance in the community. They operate mostly in the Nairobi slums. The members of Taliban are known to communicate by a system of hand signals. They, like the Mungiki, also run extortion rackets, especially of the public transport operators. The third group is the Mombasa Republican Council (MRC), which is largely present in the coastal areas with extensions such as the Mulungunipa and Kaya Bombo[190]. It is believed that retired military officers from the region are behind its operation, whose ultimate goal is to overthrow the Kenyan Government. The fourth is the Bagdad boys, a dominant group in Kisumu, in the Nyanza province. However, they have variations in Eldoret in the Rift Valley province. In Eldoret, they are a 'franchise outlet' of the group in Nyanza, however, in Huruma, they are a counterfeit- mainly composed of the Kikuyu community[191]. They are known for their expertise in using sling stones. The fifth is the Sungu Sungu. This group of gangs are present in most counties in Kenya. However, they are differentiated in terms of core business, central command and operation[192]. In Mombasa, for instance, they are hired to protect a group of 'up-country' business people. Lastly, is the Kamjesh, who are mostly know for Racketeering and Extortions targeting public service operators.

Most criminal gangs in Kenya use "tough labels[193]" to protect a section of the community as well as their own interests. This phenomenon of tough labelling was started during the post-election violence in 2008, which therefore heightened ethnic violence in the country. As much as the labelling has worked, it has also deepened the mystery behind militia proliferation in Kenya. For instance, the Mungiki label has been franchised to smaller formations that are used to police Mungiki interests and scavenge around small-scale businesses, rather than being involved in securing the community. Therefore, the proliferation of militia in Kenya has taken

[190] Kagwanja, P. (2003). Facing Mount Kenya or facing Mecca. The Mungiki, ethnic violence and the politics of the Moi succession in Kenya, 1987-2002. *African Affairs, 102*, 25-49.

[191] Ngunyi et al (2011). From Monopoly to Oligopoly of Violence-Militia Report. Nairobi:TCH

[192] Ibid-2011

[193] Tough labelling is the giving of names to smaller militia groups that are associated with other big and feared militia

different forms. Some militia groups are formed to provide protection to their communities from other ethnic groups; others are formed as racketeers, and thus are a source of job opportunities for the unemployed. Others are formed to scavenge around already existing small businesses especially of the public service operators such as Matatus. However, most of these groups are considered to be community-friendly than predatory, and are a threat to the government.

Therefore, if this phenomenon continues, the proliferation of militia groups in Kenya will continue to rise. This is of particular threat to the government, in terms of providing security and services to its citizens. However, to the citizens, it is a form of solace, knowing that a gang exists to protect their interests. Therefore, the question is: what is the government doing to address this issue? What strategies is it applying? And will it be successful. This study shall attempt to address this later on.

4.4.1 The Mungiki

a) Formation

Mungiki originated as a Spiritual group in the 1980's. Most scholars agree that it might have begun in 1987[194]. Mungiki means masses or multitude of people, and because of their numbers, the Mungiki has become a political force and a political threat. It can be traced back to its founding members Maina Njenga and Ndura Waruinge, who claim to have had a dream from god asking them to "go and liberate my people". According to them, the dream was leading them to help the Kikuyu community that were affected by clashes in the Rift Valley province. The Kikuyu community had been the target group of these clashes in the Rift Valley province during the run-down to the 1992 elections. Therefore, the Mungiki recruited most of its members who were greatly affected by the

[194] Wamue, G. Revisiting our indigenous shrines through Mungiki, African Affairs 100 (2001), 453–467

clashes in Molo, Elbourgon, Rongai, Narok, Laikipia and Eldoret[195]. Their Agenda was to mobilise masses against the government, which they argued fuelled the ethnic clashes.

The original philosophy of the Mungiki is unity, self-sacrifice and power in numbers. Therefore, their recruitment process is four pronged. A person can be a member *voluntarily* by attending their spiritual meetings and getting inspired to be part of the group. *Advocacy* is another way that the members of the Mungiki get to be recruited. They convince relatives and friends about their beliefs and culture and encourage them to join. Thirdly, the Mungiki also use *forceful oath taking* that bind the new members to the ideals of the militia. The oaths include the oath of initiation-called *kuhagira,* oath of repentance know as *horohio,* Oaths to prepare for combat know as *mbitika,* and a continuous oath know as *exodus[196].* Lastly, are those who join because they have been *impressed* by the work of the militia e.g. restoring security in the slums, or providing services such as electricity in the slums[197]. Most of these members are followers from the lower social classes such as street children, unemployed youth etc, as well as the urban poor living in the slums.

The Mungiki have no highly centralised structure. However, it operates by a set of 48 rules of the gang, which call for unpredictability and invisibility of the members and their activities[198]. The founding members encouraged the Mungiki members to go back to their fundamental Kikuyu way of life. As a result, the Mungiki reject the western customs such as the use of drugs and alcohol as symbols of Western decadence. They sought to revive the Kikuyu culture and spiritualism such as songs, prophetic

[195] Adams Oloo. (2010). Marginalisation and Rise of Militia Groups in Kenya. In , Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies pp 153

[196] Ngirachu, J and Waithaka, C. How Mungiki became most serious internal security threat, Daily Nation, 12 March 2009.- cited by Adams Oloo (2010)

[197] Adams Oloo. (2010). Marginalisation and Rise of Militia Groups in Kenya. In , Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

[198] Kagwanja, P. (2003). Facing Mount Kenya or facing Mecca. The Mungiki, ethnic violence and the politics of the Moi succession in Kenya, 1987-2002. *African Affairs, 102*, 25-49.

utterances, oath taking, initiation rites etc, as a step towards liberation of its people and a means of resolving social problems[199].

[199] Adams Oloo (2010) pp 159

The Mungiki believe that Mt. Kenya is the dwelling place of god, and where members should look for signs from god.

However, According to Adam Oloo, "although the Mungiki is depicted as a religio-cultural organisation, it remains to a large extent an entity searching for political power"[200]. Mungiki operates in multitudes. And because of their numbers, they are a political threat. In 2003, the government criminalised them, and at this point their objectives changed. They started taking control of the slums, and it is here they are believed to extort millions and rule with an iron fist.

b) Agenda and activities

The Mungiki control most of the Nairobi slums. They prey on the poorest by taking over the slums and setting up huge extortion rackets. They brutally execute anyone who challenges their rule. However, according to some Mungiki members, the poverty being experienced in the slum areas is what led them to come up with a 'welfare system' that the government cannot or has not created for them.

The Mungiki has adopted the use of cell groups to spread its influence. The community appreciate the presence of the Mungiki because they offer them protection, security and food. A good example is the Dandora dumpsite, which used to be home to dangerous gangs. When the Mungiki came in, they organised the people living in Dandora and working at the dumpsite into cell groups of 10 people. Each group was allocated a portion of the dumpsite where they could operate without any disturbance. Their work is to collect plastic waste for KES 10 per bag. Therefore, according to Maina Kiai- chairman of the Kenya National Commission for Human Rights

[200] Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

(KNCHR), the Mungiki has created job opportunities and businesses for the poor, that's why they are a threat to the government.

Further, the Mungiki has taken over the provision of services such as supplying water and electricity, Management of public transport system, levying illegal taxes, and extorting protection money. They have taken over the provision of these services in the central province as well as in Nairobi. In other words, they have set up a parallel government - the Mungiki Government, with a tax collection machinery and judiciary system[201].

According to news reports, the Mungiki are not always popular with communities. Some slums such as the Mathare slums in Nairobi accuse the Mungiki of exploitation and murder. According to the residents of the slums, although the Mungiki at first were welcomed in the slum due to the protection and provisions they gave to the slum dwellers in Mathare[202], they became an un-wanted gang in the area when they started charging for their services and killing anyone who refused to adhere to their terms. The Mungiki stole electricity from the Kenya Power and lighting and brought it to the slums. However, the slum dwellers had to pay KES 300 per bulb per month. They further, asked for protection fees of KES 30 in areas they operated, as well as collected levies from kiosk owners and vegetable vendors of between KES 150-300 each. They claimed that they came to fill in the gap that the government has failed to fill in the slum areas. With the help of the 'Kwekwe squad'- a secret police squad that is after the Mungiki but was later disbanded; some parts of Mathare slums were able to get rid of the Mungiki in the area.

The Mungiki also man most feeder roads in the central province. They collect KES 50 from every vehicle leaving the main roads and approaching

[201] Adam Oloo (2010). Marginalisation and Rise of Militia Groups in Kenya. Pretoria: Institute of Security Studies pp 158

[202] Kagwanja, P. (2003). Facing Mount Kenya or facing Mecca. The Mungiki, ethnic violence and the politics of the Moi succession in Kenya, 1987-2002. *African Affairs, 102*, 25-49.

their roadblocks in the interior[203]. Other sources of income for the Mungiki include garbage collection, charges for using public facilities such as toilets, charges to small businesses, as well as membership fees from Mungiki members. The Mungiki members contribute KES 3 per month. This adds up to about 4 million Kenya shillings per month[204].

From the Matatu industry (a form of public vehicle in Kenya), the Mungiki collects about KES 200 from each Matatu, leading to a total of about KES 10, 000 per day. Further, they collect KES 1000, and KES 400 from Matatu drivers and conductors respectively, for them to be allowed to operate in their routes[205]. They also operate a motorcycle taxi service in the central province, where they get more revenues for their activities.

In addition to this, the political elites also support this 'bandit economy' by paying Mungiki members to gather up support for their political parties during the election campaigns. Therefore, the Mungiki continues to thrive due to this bandit economy they operate as their source of existence and sustenance.

However, this bandit economy may not be thriving, as it is, if the government policies were functioning properly. The poor functioning of government policies has created a gap that the militia groups are thriving in. If the government had an effective system of providing services such as electricity, water, sanitation, and security to the individuals living in the slum areas, then, the exploitation of the poor by the militia groups would not be taking place. The community only demands these services from the militias because the government has failed to provide them.

[203] Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies pp 158

[204] According to the then National coordinator Ndura Waruinge

[205] Adams Oloo (2010)

4.4.2 Sabaot Land Defence Force (SLDF)

a) Formation

The Sabaot Land Defence Force (SLDF) was formed in 2006 as an organisation fighting against the injustices and discrimination in the allocation of land in the Mt. Elgon region. The land clashes in Mt. Elgon that led to the formation of SLDF are a result of the Sabaot displacements dating back to the colonial era. Land is the dominant factor leading to conflict in Mt. Elgon.

In 1932, the colonial government moved the Sabaot community from Trans-Nzoia to Mt. Elgon to create white highlands. A decade later, in 1948, the colonial government suggested to move the Ndorobo (Mosop), a sub tribe of the Sabaot community, from the highlands of Chepkitale in order to protect the Mt. Elgon Forest[206]. This move took place in 1971/72, and was known as the Chebyuk phase 1 settlement scheme. In this phase, the government moved the Ndorobo (Mosop) from the Chepkitale and created the Chebyuk settlement scheme to resettle them. The Scheme consisted of 1489 parcels of five acres of land[207]. The Phase II of the settlement known as Cheptoror began in 1979 when leaders of Sabaot sent a delegation to the then president Moi to resettle the landless Sabaot community. As a result of this petition, the Mosop Sub tribe and the Soy sub tribe were resettled on 2, 516 parcels of land in 1989[208].

However, not all the landless people were resettled since the government did not complete the settlement initiative. Further, those who were resettled lacked legal ownership of the land, as the government failed to

[206] Ndungu, J. (2008). Mt.Elgon. In: Wakhungu, J., Nyukuri, E., and Huggins, C. (2008). Land Tenure and Violent Conflict in Kenya. Nairobi: Africa Centre for Technology Studies.

[207] Jerome Lafargue. (2008). The General Elections in Kenya, 2007. Nairobi: IFRA

[208] ibid

issue them with title deeds[209]. However, the settlers-mostly the Soy Sub tribe- continued to cultivate the land, as well as subdividing it and selling it among themselves. The phase three of the settlement scheme know as the Chebyuk III began in 2002, after the government cancelled the other two schemes for lack of completion.

In 2006, there was controversy over the phase III settlement scheme. The Soy sub tribe, which had been resettled in the previous scheme, had to surrender part of their land to the Mosop sub-tribe. This crashed the expectation of the Soy community that the surveying and allocation of the third phase would eventually formalise their ownership of the land[210]. As a result, the Soy mobilised young people to defend their land and resist any evictions, leading to the formation of the SLDF.

The SLDF was therefore established in 2006 as a result of the controversies following the Chebyuk phase III settlement. It is composed of mostly the Soy Sub tribe of the Sabaot community[211]. Their main agenda was to resist the reallocation of land to other sub-tribes, especially the Mosop Sub-tribe. Therefore, land clashes began when the Soy sub tribe was forced to make way to the new allotees of the Mosop sub-tribe. The Mosop therefore became the targets of the SLDF, as they were seen as favoured by the government in the allocation of land.[212] The impact of the conflict that erupted as a result of these settlement controversies led to over 600 people dead, disruption of socio-economic activities in the area including farming thus leading to food insecurity, disruption of education, and massive displacement of people[213]. The conflict that had began as an inter clan

[209] Adams Oloo. (2010). Marginalisation and Rise of Militia Groups in Kenya. In , Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

[210] Ben Rawlence. (2008). "All the men have gone": War crimes in Kenya's Mt. Elgon Conflict. New York: Human Rights Watch

[211] Ben Rawlence. (2008). "All the men have gone": War crimes in Kenya's Mt. Elgon Conflict. New York: Human Rights Watch

[212] ibid

[213] Ndungu, J. (2008). Mt.Elgon. In: Wakhungu, J., Nyukuri, E., and Huggins, C. (2008). Land Tenure and Violent Conflict in Kenya. Nairobi: Africa Centre for Technology Studies.

conflict between the Soy sub tribe and the Mosop Sub tribe has since grown and spread, with the SLDF now targeting other communities and immigrants being allocated land in the area.

b) Agenda and Activities

Since its formation in 2006, there has been minimal government presence in Mt. Elgon. Therefore the SLDF took into its own hand the initiative to settle the conflict in the area. They made their own laws that the inhabitants of the area have to adhere to. Further, they established informal courts to punish those who acquired land corruptly, as well as petty offenders. In addition, they have an administration system that is complete with mechanisms for levying illegal taxes[214].

The SLDF structure has three divisions. The military, composed of 3000 men according to the western Kenya Human Rights Watch. The Spiritual, which is in charge of oath taking that binds the members to SLDF and receiving special charms from the spiritual leader known as the Laibon that apparently protects them from the authorities and enemies bullets. Lastly, is the political wing which is their driving force[215]. The recruitment of the SLDF members began as voluntary but ended up being a forceful affair. Every Family of the Soy sub tribe had to surrender one of their sons or pay a waiver fine of KES 10, 000.

Their operations and activities are almost similar to those of the Mungiki. They operate extortion rackets where they collect illegal tax from the people. The taxes they collect depend on the nature of work of an individual, and their level of income. For those community members in the white-collar jobs such as teachers, and civil servants, the taxes are more compared to farmers and other domestic workers. They SLDF collect a

[214] Adams Oloo. (2010). Marginalisation and Rise of Militia Groups in Kenya. In , Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

[215] ibid

portion of an individual's salary, while for farmers; they part with some of the sales made from the produce. In addition, they collect part of the food produce for every acre of land harvested by the farmers[216].

The SLDF compete with the Mungiki in controlling the public transport industry. Just like their counterparts, they collect levies from public transport operators on a daily basis. However, they do not operate in the same areas as the Mungiki. These sources of income have made SLDF attractive to the unemployed youth from the lower class. They have created job opportunities for this group of individuals, and a source of income for their survival.

4.4.3 Mungiki and SLDF: Similarities and Differences

More similarities than differences can be identified between the two-militia groups. One is *Mode of operation*. Both SLDF and Mungiki are known to operate extortion rackets that endanger human security. Most people living in the areas that the militia groups operate are now unable to run their businesses effectively thus affecting the economy at large.

They are both known to use crude weapons such as the machetes, bows and arrows, and occasionally guns. They are known to kill anyone that opposes their rule in the community, and therefore instil a sense of fear in the people. In addition, they hardly engage directly with the state instruments and machinery. They only strike and leave the scene[217]. Secondly, their objectives are mostly influenced by the *frustration that they have towards the political system*. In the case of Mungiki, they claim to exist because they are filling gaps in the community that the government has created. The

[216] Wanyonyi, R. (2008). Vigilante demand 'fee' from teachers, East African Standard, 15 January;
Simiyu, Militianisation of resource conflicts.

[217] Adams Oloo. (2010). Marginalisation and Rise of Militia Groups in Kenya. In , Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

SLDF on the other hand claim to amend the historical injustices related to land that has been directed towards the Sabaot community[218].

Thirdly, in terms of *religion and culture*, both militia groups subscribe to administration of oaths and spiritual guidance. The Mungiki believe that they can get help from god who resides on Mt. Kenya. Therefore, they call upon the people to return to African traditions and spiritualism in order to solve social problems. The SLDF on the other hand have a spiritual leader known as the Laibon who offers spiritual guidance to protect them from their enemies.

Fourthly, both militia groups have *instilled fear in the community* due to their trails of destruction, killings, and displacements[219]. Part of the community accepts them because they offer protection and job opportunities for the young people, while others detest them because of exploiting them.

The main differences between the two-militia groups are that one is more organised than the other. Despite both having a political, spiritual and military wing, the Mungiki are more organised than the SLDF. Further, the Mungiki has a greater following than the SLDF. Secondly, the SLDF operates only in a rural setting in the Mt. Elgon and parts of Trans-Nzoia district, while the Mungiki operates both in the rural and urban setting[220]. As a result, the Mungiki are much harder to crack down than the SLDF due to the urban surrounding. Finally, Mungiki is known to shift religions whenever it is faces repression. It has since changed to Islam and Christianity.

[218] Jerome Lafargue. (2008). The General Elections in Kenya, 2007. Nairobi: IFRA

[219] Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

[220] They operate in central province and parts of Nairobi

However, it is imperative to note that the main reason for the proliferation and operation of these militia groups is due to poor state policies. When the state policies are not functioning properly to meet the needs of the people, then, the individuals in the poor communities are denied access to the basic human security "freedom from want". They are denied the access, protection and empowerment to the material or quantitative dimensions of human existence such as food, shelter, clothing, education and health care[221]. As a result, they turn to anyone that may provide these services to them and in this case the militia groups.

4.5 Summary

In this chapter we have seen that Kenya has experienced an exponential growth in population since independence as was seen in census data over the period. Kenya like many other sub-Saharan countries is also going through the second wave of urbanization, which has led to an increase in informal settlements especially in urban centres in most cities of the global South. This has resulted in an environment where poverty, unemployment, marginalisation, ethnic inequalities, economic disparity, and unequal distribution of national resources and services are commonplace. On the other hand the economic growth rate has not been at par with this increase in population. The government has been unable to match up to this increase in demand for its services.

To meet this growing demand for services, alternative forces have emerged to fill the gap where the government has been found wanting. On the one hand private enterprises have come up to provide services such as security, garbage collection, water and sanitation among other services. However, the majority of the population who live in slum areas cannot afford or are unwilling to pay for commercial service providers. The above scenarios then exclude the urban

[221]Luk Van Langenhove. (2004). Regionalising Human Security in Africa. *Paper for the "UNU-TICAD III Follow-up" Workshop Tokyo, 29-30 March 2004.* United Nations University: UNU-CRIS

poor from service provision. As a result a third force has emerged to address the needs of these slum dwellers. These have been referred to as militia or organic and organized criminal gangs in this thesis.

These gangs are youth groups that have come together to provide those services to the community that the government has failed to provide and that they cannot afford from private providers. These include water, sanitation, electricity and security. These services are provided illegally but at a lower cost. This therefore becomes a cash cow for these gangs as they ran extortion rackets and control in informal settlements.

Using two case studies; the Mungiki and SLDF we looked in detail at the formation, agenda and activities of militia groups. We noted that most of these groups have been in existence and have only recently changed their agenda and activities to take advantage of the poor service delivery situation in informal settlements. Therefore we can conclude that their proliferation is primarily in response to the frustrations of communities in need of basic services. The communities are turning to these groups that will address their needs. It has been seen that a relationship has thus developed between the communities and the criminal groups that is symbiotic; while the gangs provide the required services, the community and the status quo with regard to service delivery has become a breeding ground for criminal groups and means for their sustenance. The ineffectiveness of the government to deliver services has created a space in which these groups can operate as they emerge as alternative service providers.

5. IMPACT OF STATE FRAGILITY ON COMMUNITIES IN KENYA

5.1 INTRODUCTION

In previous chapters we have looked at the structure of the Kenyan Government and then we discussed the activities of illegal criminal groups referred to as militia. In this chapter we look at the impact of state fragility in Kenya. This is in response to the second research question of this study: "*...if the proliferation of organised criminal groups in Kenya is a function of state policy failure, then what are the implications of state failure on service delivery to the community?*"

In chapter 4 of this study, we deduced that as the population in post independence Kenya increased, the government was unable to keep with service delivery. Its finances were strained and as a result, the government has over the years concentrated more on providing services to the high-income areas of the country while socially excluding the population in the poorer slum areas. Poor government policies resulted in neglect of the socio-economic challenges of slum dwellers. This it has been shown creates opportunities for criminal gangs to operate and proliferate in the communities. In this chapter we now investigate the impact of State fragility: Service Delivery Failure, Authority and Legitimacy Failure on communities.

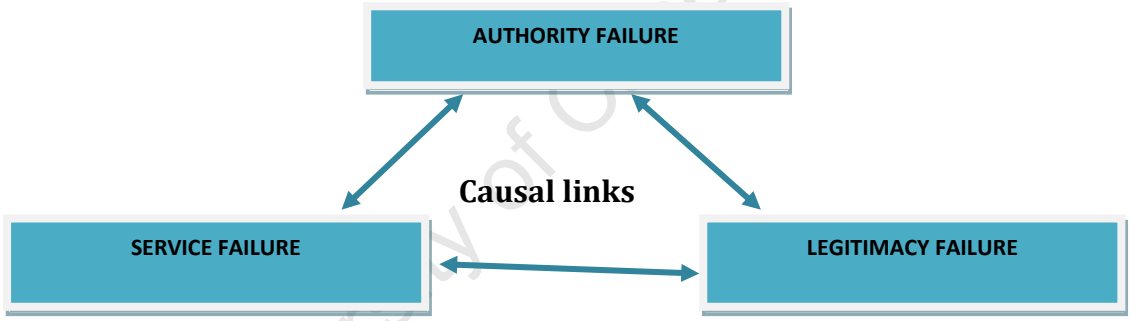
5.2 Elements of State Fragility

As was discussed in chapter 2, there is no universally accepted definition of state fragility. However, different scholars and practitioners have tried to use various theories to bring out an understanding of this concept of fragility. Generally it has been agreed that a state is considered fragile when it fails to perform its functions to meet the expectations and needs of its citizens: "...states that are

failing, or at risk of failing with respect to *authority*, comprehensive *basic service provision* and *legitimacy*"[222]. From this definition we also get the causal link between the three dimensions of state fragility: Authority Failure, Service Failure and Legitimacy Failure.
It was determined that Kenya falls in this category of fragile states.

Authority failure we saw relates to a state that lacks the authority to protect its citizens from violence of various kinds. Service failure relates to a state that fails to ensure all citizens have access to basic services, while Legitimacy failure means the state enjoys only limited support among the people and is typically not democratic. We shall theoretically analyse in relation to Kenya.

Figure 6: Causal Links of State Fragility



(Source: Stewart, F. and Brown, G. 2010. (ed.3).Fragile States. London: CRISE)

[222] Stewart, F. and Brown, G. 2010. (ed.3). Fragile States. London: CRISE

5.3 Impact of State Fragility on the Community in Kenya

5.3.1 Service Delivery Failure

Service Delivery Failure by the Local Government

(Source (edited): Gerhard,V.L, Steffensen, J. and Naitore, H. (2007). Local Level Service Delivery, Decentralization, and Governance Case of Kenya. Denmark: JICA.)

The Local Government Act Cap 265 (1963) and its subsequent amendments provides for administrative and legal powers, functions and responsibilities of Local Authorities (LAs), on the basis of decentralized authority. The law also provides for sources of revenues to finance the delegated functions. Local Authorities collect revenue from a variety of taxes, fees and charges within their area of jurisdiction and presently also receive resources from the central government through the Local Authorities Transfer Fund (LATF), operational since 1999/2000, and which now covers both a substantial part of their operational costs as well as some development expenditure. In addition, some LAs receive

resources from donors through various projects[223].

However, in practice, the LAs lack the resources for effective service delivery. Furthermore, the existing LA systems of planning and resource allocation have been largely inefficient in terms of addressing the service delivery needs. Most of the LATF funds are used for operational costs, e.g. in 2002/03 more than 65 % of the total LA revenues (including the grants) were spent on salaries and debt resolution at the LA level. As a result of this, the visible contribution of local authorities to service delivery is minimal[224].

Therefore, the poor financial management by local authorities, coupled with increase in population, and increase in demand of services by citizens has led to the decrease in government service provision. Good services are a core element of a social contract, which is defined by Brinkerhoff as "*…a set of rules and institutions that link the state and society"*[225]. The relationship between the state and the society is governed by this social contract. A breach in the social contract by either of the stakeholders weakens this relationship. The weakening of the relationship between the state and the society can be due to an abusive rule, unequal access to economic opportunities or ethnic exclusion and oppression of minorities. As a result, the state begins to drift away from the society, and a potential of state fragility begins to emerge. Therefore, when the social contract that governs the relationship between the state and the society diminishes, the downwards spiral of the state begins leading to fragility.

As has been previously discussed, when the state fails to perform its basic functions, other non-state actors e.g. the civil society emerge to make

[223] ibid

[224] Gerhard,V.L, Steffensen, J. and Naitore, H. (2007). Local Level Service Delivery, Decentralization, and Governance Case of Kenya. Denmark: JICA.

[225] Brinkerhoff, D.W. (2011). State Fragility and Governance: Conflict Mitigation and sub national perspective. Development policy review. 29(2): 131-153

private provisions of the same public goods. However, the cost of providing such goods by the private sector exceeds the benefits[226]. As a result, the private sector mark up their prices to such an extent that the poor cannot afford. This erodes the basis for efficient markets, making the poor turn to other alternative forces that illegally provide these services at an affordable cost.

Hence there is a reciprocal influence between service delivery and fragility. When the state policies on service provision fail to trickle down to the poor in the society, alternative criminal non-state actors such as the militia emerge to provide these services to the community.

Impact of Service Failure on the community

Because of state service delivery failure by omission or commission, the community has turned to alternative forces - the *militia*- to provide those services. But once embedded in the community, these gangs develop an appetite for crime and extortion, leading to their predation of community. And from this, their relationship with community becomes either *parasitic* or *symbiotic.*

Parasitic relationship

In this kind of relationship the militia groups depend on the community to survive. This relationship has been clearly demonstrated by the two-militia groups we have studied: the SLDF and the Mungiki. According to a research done for UNDP (2010-2011) on sources of gang income in the community in Kenya, Gangs parasitic nature was seen in the revenue they collect from communities as seen below;

[226] OECD/DAC. (2008). Service Delivery in Fragile Situations: Key Concepts, Findings and Lessons. Journal on Development. 9 (3)

Table 6: Militia Relationship with Community

Militia Relationship with Community & Sources of Revenue	Average Percentage of Revenue	Rank
Militia Parasitic Relationship with community involves: Extortion, Crime and Political Projects	52.8%	1
Militia symbiotic relationship with community involves: Investments in community, Levies on illegal services, Security provisioning	33.5%	2

(**Source:** UNDP study done by the consulting House in Kenya: Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi: TCH)

Therefore to survive, and accumulate, these gangs have to extort, engage in crime and act as political brokers. For example, we have seen that the SLDF forces community members to pay a certain fee to the militia group, or to surrender one of their sons for combat[227]. In the same way, the Mungiki collect levies from the public transport system and other businesses. Businessmen such as shop owners; vegetable vendors and other small business owners have to pay a certain amount to the militia group for them to operate in areas controlled by the Mungiki. The Mungiki also extort taxi drivers and conductors, for them to operate in their routes. In this case therefore, the relationship becomes parasitic. One party benefits more than the other; the Militia groups benefit at the expense of the community.

Symbiotic relationship

This is a relationship where there is a mutual dependence between the community and the militia groups, especially in areas of service provision such as security and supply of illegal services. According to the research done for UNDP on gang sources of income (represented in the table

[227] that is if they don't surrender one of their sons to be part of the militia group, they are at risk of being killed

above), the community identifies: Investments in community, Levies on illegal services, Security provisioning, as symbiotic[228]. The community depends on gangs for illegal services such as water connections and electricity. And because of police absence, they also depend on gangs for security. These are business opportunities for the gangs resulting from a community demand. Hence, the two are seen as depending on each other with regards to security, provision of illegal services and community investments.

5.3.2 Authority Failure

One of the basic functions of a government is to provide security and protection to its citizens within its territory. The Constitution of Kenya states, *"…National security is the protection of the territory of Kenya, its people, their property, rights and freedoms, and other national interests against internal and external threats".*[229] However, during the post election violence of 2007/2008, the government of Kenya failed to provide sufficient protection for its citizens as is required of them by the constitution. The police were unable to maintain law and order and were overwhelmed by the violence. This therefore created grounds for organic and organised criminal groups to operate as communities sort to protect themselves from aggressors.

Further, due to government absence in the slum areas, ethnic violence continues to grow. Different ethnic militias are providing security and protection to their own community members at a fee. Any community member failing to pay the protection fee is therefore at a risk of attack by the militia groups. This kind of violence can be to the extreme of be-heading and skinning the victims. The government has been unable to contain this kind of violence, and provide security to the community members.

[228] As illustrated in the table above

[229] National Constitution of Kenya. Chapter 14 National Security; Article 280(1).

In Kenya, The Sabaot Land Defence Force (SLDF) for instance, had to gang up members of the Soy sub-tribe of the Sabaot community in order to deal with the issue of land in the Mt. Elgon region. Land has been a problem in this region since the early 70s. According to the Sabaot community, the government has been unfair in the distribution of land to the community members, favouring one sub-tribe over the other. In the phase III of the Chebyuk settlement scheme, this study has shown how the government favoured the Mosop sub-tribe over the Soy sub-tribe. The government forcefully ordered the Soy-tribe to surrender part of their land to the Mosop tribe. As a result, the Soy-tribe mobilised young people to defend their land from the injustices and discrimination of its allocation, thus leading to the formation of the SLDF. This is a militia group operating in the Mt. Elgon region with its own laws and system of administration. They provide security and protection to its people, as well as ensure no one illegally possesses land in the area without their approval. They have taken up the role of the government in this area in terms of protection and security.

On the other hand, the Mungiki control most of the slums in Nairobi and the central province. They have taken over the slums and set up huge extortion rackets. The Mungiki claim that the government policies have neglected the poor in the slum areas and are only concerned with the welfare of the middle class and the rich in the society. As a result, essential services do not reach the poor giving the Mungiki opportunities to provide these services in the slums. The government has been unable to guarantee security and protection to the slum dwellers. Mungiki have therefore taken it upon themselves to provide protection services to the slum dwellers at a fee of KES 30 per month.

Impact of Authority Failure

The government is mandated provide protection to all citizens within its borders. Furthermore, when militia groups turn violent against the communities, it is the government responsibility to protect the communities. However, it has been shown that these militia groups have a shifting

relationship with the government. Their presence is also beneficial to the politicians especially during election periods. The politicians use the militia gangs to rally support for their parties during elections. They use the militia groups to intimidate opponents and their supporters. As a result, the militia shifts alliances in the political arena depending on their political interests at the time, which is mainly to obtain political power, financial gain and status for their community.

Therefore, the state's sub-optimal response to the militia is a function of its embedded interest in the violence enterprise. The states are mainly the underwriters to the militia violence. Therefore, while the militia earn a living and prestige, the underwriters earn political power[230]. The relationship between the militia and the state can therefore be defined as symbiotic. The existence of one depends on the survival of the other. In this case, the existence of the political power of the leaders, especially during elections, depends on the survival of the militia groups as the instigators of violence against their opponents.

According to a research done by Armed Conflict Location and Events Datasets (ACLED) on government response to incidence of violence in Kenya, it was noted that at times state intervention against militia activities is high, while other times it is low especially during election periods when the militia services are needed most by the political actors. The figure below represents this data.

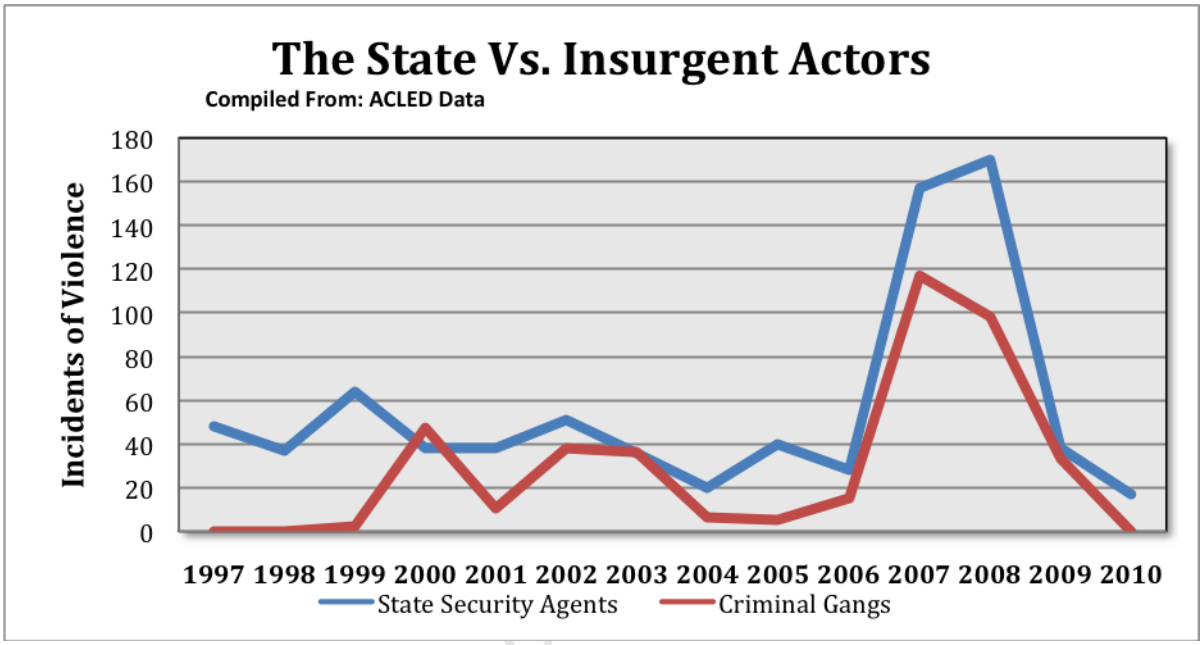
The blue graph on the figure below represents state interventions to curb violence. Logically, this graph must have an inverse relationship with the red graph. That is, in the event the blue one goes up, the red graph must logically go down. This is particularly true of the relationship between state security agencies and the criminal gangs. Yet there are moments when the relationship between the two is directly propotionate to one another. The higher the levels of state intervention, the more the gang violence. There are

[230] Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi: TCH- A study done on behalf of UNDP

many interpretations to this and one of them is that when the relationship is directly propotionate, then there is a pressupposed collaboration between the state agencies and the drivers of violence.

Figure 7: State Vs. Insurgent Actors

Source: ACLED Website[231].



Source : Armed Conflict Location and Events Datasets (ACLED). URL: http://www.acleddata.com/

According to the graph above, in the period before 1999, criminal gang activities were limited. However, State security activities went up and this is probably because SLDF and the militarized section of Mungiki were active at this time. Come 1999 criminal gang activities shot exponentially culminating in a record high in 2000 while state security agents' activity went down. And this is probably because this is the point where state agencies and criminal gangs began to collaborate just before the 2002 elections. This is the period when Mungiki was recorded as having acquired some military Land Rovers from the Kanu government[232].

After the 2002 elections, there is a violence lull where criminal gang activities plateau. In 2004, however, the activities take a sharp dip, which is explained by

[231] Available at: Armed Conflict Location and Events Datasets (ACLED). URL: http://www.acleddata.com/

[232] Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi: TCH- A study done on behalf of UNDP

reduced operations by gangs working with the previously regime having to go under in the new regime. And with this dip, from 2002-2004, there is a sudden fall in state security agents' activities. In 2005, activities of criminal gangs were lowest in spite of the constitutional referendum, while state security was high. Post referendum, ethnic tensions heighten and find expression in criminal gangs from 2005-2006. Ethnic expression heightens as the country approaches the 2007 general election. In 2007-2008, there was suppression by state security, and in response there was decreased activity by criminal gangs.

Therefore, from this analysis, it is important to note that state intervention on instances of militia proliferation and activities is value driven. The state will suppress the activities of the militia when there is no benefit they are deriving from them, however, when militia services are required by the state, the state intervention decreases, thus, showing an instance of authority failure on the part of the state.

5.3.3 Legitimacy Failure

Legitimacy failure means the state enjoys only limited support among the people and is typically not democratic. Service delivery is the heart of social contract. It keeps the leaders accountable to the citizens, and ensures their political support by the citizens based on the citizens' satisfaction of the services provided to them[233]. A state therefore manifests its social contract with the citizens through implementation of its core functions that include maintenance of security, enabling economic development and provision of basic services to meet the needs of the population[234].

Provision of the basic core state functions by the non-state actors can have negative effects on the legitimacy and sovereignty of the state. Therefore, the state needs to restore this accountability and legitimacy by taking responsibility

[233] OECD (2006). Work stream on service delivery phase 3. In: 7th meeting of Fragile States Group, October 17-18. Paris: World Bank

[234] Batley, R. and Mcloughlin, C. (2010). Engaging with non-state service providers in Fragile states: Reconciling State Building and Service Delivery. Development Policy Review, 28(2), pp 131-154

in making policy, contracting the non-state service providers and regulating and monitoring the services provided by the non-state actors. This needs a policy between the state and the service providers, which is normally known as a compact[235]. However, in the absence of an effective local authority policy framework, service delivery becomes fragmented. As a result, diminished central resources and declining control of services by the state gives prominence to these alternative and illegal non-state provisions[236]. As a result, both direct and indirect role of the state in service provision becomes poorly undertaken, due to the weak capacity to control and support the non-state service provision.

To ensure efficient service delivery by the state, the goal of the citizens, the policy makers and the providers need to be satisfied. Therefore, this governance process should apply accountability relationship between the citizens and the leaders[237]. Accountability is a central element in service delivery. There should be accountability between the state and its citizens to ensure essential services and public goods are provided to the citizens by the state. Therefore, accountability between these two stakeholders should be defined. A kind of policy should exist that specifies service delivery standards for the government and other service providers, monitoring and evaluation methods, as well as rewards and sanctions.

In fragile states, this political mechanism of expressing public demand and accountability is poorly developed. The government capacity to meet its basic function is weak[238]. This further leads to weak service provision, which in turn weakens the society. As a result, the citizens no longer support the state due to their dissatisfaction in the services provided by the state. Only then is the state considered to have failed with regards to legitimacy.

[235] Ibid- OECD/DAC 2008

[236] ibid

[237] OECD/DAC. (2008). Service Delivery in Fragile Situations: Key Concepts, Findings and Lessons. Journal on Development. 9 (3)

[238] Baird, M. (2010). Service Delivery in Fragile and conflict affected states in world development report 2004. World Bank

5.4 Summary

In this chapter, we have shown that Kenya is one of the countries that are at risk of failing in all the three dimensions of state fragility; Authority, Legitimacy and Service delivery. We have shown how service delivery by the government of Kenya has been deteriorating since independence partly due to the increase in population, but largely due to poor governance and government policies. As a result of service delivery failure, we have demonstrated how other alternative forces-*militia gangs*- have emerged to provide services at a lower cost. Relationships have then been formed between the militia and the communities that are either *symbiotic*- where both the community and militia benefit, or *parasitic*- where only the militia benefits from the community.

Further, with regards to authority, this chapter notes that the government of Kenya has failed to control violence of various kinds within its borders. Insecurity in Kenya has continued to increase as a result of government absence in its provisioning capacity as the provider of security to its citizens. This also has had impacts on the community. Instead of government getting rid of militia gangs that perpetuate the violence in the communities, the have rallied their support especially during the election periods. This therefore leaves the country at the risk of rapid rise of insecurity, and the growth and sustenance of militia gangs.

Lastly, the government of Kenya has lost its legitimacy to its citizens due to failure to satisfy them through basic service provision. We have seen that for the government to regain its legitimacy among its people, it has to ensure that it performs its basic functions of providing basic services to its citizens effectively and efficiently. It needs to meet its end of the social contract it has with its citizenry.

6. CONCLUSION

6.1 Introduction and Background of study

Kenya has in the recent past experienced a proliferation of militia groups that have especially manifested themselves amongst poor communities. Here, amongst the poor we have shown that these groups provide essential services like security, water supply, transport regulation, amongst other services coupled with highly organized extortion rackets. In some cases their existence has been appreciated by the community while in others loathed as they leach on helpless poor communities. Further still, their existence has now become a menace to the government and peace loving Kenyans. Their activities and agenda culminated in the Kenya post-election violence of 2007 that left several thousands dead and many more internally displaced persons.

This thesis was investigating the existence of these militia groups, their agenda and activities to establish if their existence is a function of state policy failure. And if so, what the implications are on service delivery to the community? Therefore, the pursuit of better service delivery by the state to its citizens has been the focus of this research. This study has shown that service delivery is the heart of the social contract between a state and its citizens[239]. It keeps the leaders accountable to their citizens and ensures citizens support for their leaders based on their satisfaction of services provided to them.

[239] OECD/DAC. (2008). Service Delivery in Fragile Situations: Key Concepts, Findings and Lessons. Journal on Development. 9 (3)

6.2 Research Questions

6.2.1 Is the proliferation of organic and organized criminal groups in Kenya a function of state policy failure?

To answer this research question, we investigated the characteristics of an ideal state and fragile states. This helped us to understand state policy failure in the context of fragile state. More specifically we investigated service delivery failure as the avenue through which criminal groups have infiltrated communities.

6.2.1.1 Fragile state: Authority, Legitimacy and Service Delivery Failure

This study has shown that the concept of 'fragile state' is a relative concept suggesting a deviance and aberration from the ideal state. However, there is no universally accepted definition of fragile states. Different scholars and institutions have attempted to define the concept as states that lack the capacity to discharge their normal functions and drive forward development. Therefore, a state is seen as fragile when it fails to provide the basic needs to its citizens. In addition to not meeting the *basic needs of its citizenry*, it also *lacks authority* within its territory and *lacks the democratic support of its citizens.* Kenya ranked 16 in the failed state index for 2012 in a report published annually by the Foreign Policy Magazine and the fund for peace.

6.2.1.2 Basic Service Delivery Failure: Set of failed Government Policies

Ranking highly in the failed state characteristics is the lack of a provisioning capacity of essential services by the government of Kenya to its growing population. Service delivery especially in the slum areas in Kenya is very poor. Many of the slum dwellers in Kenya have to walk many kilometers from their homes in search of clean water and sanitation, and generally do not have electricity. Further, there are no proper social amenities provided for the slum dweller. Schools have poor infrastructure and no sufficient educational materials. Students have to walk long distances in search of better education. In most cases, even this education provided in proper school facilities they cannot afford. More so, health care is wanting in the slums. Most of the people cannot afford the cost of getting proper health care in the community.

The population in the slums therefore suffers social exclusion. They are excluded from the mainstream service delivery by the government. Water, electricity, education, proper health care and other basic services provided by the government are either too expensive for ordinary slum dwellers or not provided at all.

We therefore investigated why the government has failed to provide basic services to the urban poor. A study of the history of Kenya and its demographics revealed that the population of Kenya has grown exponentially since independence in 1963 to its current 40+ million Kenyans. However, government services have declined since independence especially to the poor population. This has been attributed primarily to population growth and the second wave of urbanization which has led to the growth of slums in many sub-Saharan cities. The government has been unable to match this growth and it has been unable to deliver services adequately to the urban poor. It's financial and management capacity to match the growth in population is weak and some of the old government policies dealing with service delivery have not been revised to adapt to the new challenges facing the country. The policy making process and implementation has not matched the growth of cities and population growth. Therefore many communities have been left in want of basic services like security, clean water and sanitation. It was concluded that the government finds itself in this undesirable position due to a set of failed policies to deal with population growth, urbanization and service delivery.

The Government's failure in Service delivery has not been without its consequences. Its inability to meet its end of the social contract it has with its citizens has led to the emergence of alternative forces that have almost completely taken over service delivery amongst the poor. These are Legal private enterprises and illegal criminal groups that have arisen to filled the vacuum of provision of essential services.

6.2.1.3 Alternative Forces

a) Private Enterprise

Private enterprises have come up to provide services such as security, garbage collection, water and sanitation among other services. These are especially popular in middle income and high-income residential areas that can afford their services, as they are often better and more reliable than the government services. However, these were not the focus of this thesis. We looked at the majority of the population who live in slum areas who cannot afford or are unwilling to pay for commercial service providers.

b) Proliferation of Militia/Criminal Groups in Kenya

Criminal groups referred to as militia groups were the focus of this thesis. These have emerged as an alternative for the poor who cannot afford private services providers and have been excluded by the government service delivery policies. To understand the nature of this third force we studied the Mungiki and SLDF in detail to understand their agenda and activities.

There are more than 30 militia groups in Kenya with the most dominant being the "BIG SIX": Mungiki, Taliban, Mombasa Republican Council, Sungu Sungu, Sabaot Land Defence Force (SLDF), and the Kamjesh. These militia groups are either classified as state militias or non-state militias[240]. The state militias are organised in defence of a political order, or fight on behalf of the state and state functionalities. Therefore their agenda and purpose of existence and proliferation is mainly state centric[241]. On the other hand, the non-state militias are 'privately' organized armed groups. They are not part of the regular army of the state. They are composed of ordinary citizens who organize themselves to combat certain threats and security issues. They have no regular salary, or a fixed term of service. They are mostly ethnically oriented and seek to protect the interests of their own communities**.**

[240] Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies, pg 6-8

[241] Gani J Yoroms, Militias as a social phenomenon: towards a theoretical construction, in David J F rancis (e d), Civil m ilitia; A frica's i ntractable s ecurity m enace? Aldershot: A shgate, 2005, 31–50.

The Mungiki

We studied the operations of these militia groups in the Mathare and Kibera slums of Kenya. As the study has shown, the Mungiki are the most dominant militia groups in these slum areas. They have taken advantage of the failure of the government to provide essential services to these slums. They therefore end up in control of most of the Nairobi slums preying on the poor, by running huge extortion rackets. In the slum areas, the Mungiki provide electricity by stealing it from the Kenya power and lighting company and bringing it to the slums. They charge the slum dwellers a fee per bulb per month for them to access the electricity. Further, they provide protection services to the slum dwellers[242] asking for protection money those living in their areas of operation. By doing so, they believe that they are playing a role which the government has failed to play. They therefore see themselves as essential to the community.

In some instances, the community appreciates the presence of the Mungiki because they offer them protection, security and food. Therefore, a symbiotic relationship is formed between the militia group and the community. The survival of one depends on the existence of the other. The Mungiki depend on the levies they get from the community, and the community depends on the militia group for their safety and food. On the other hand the relationship is parasitic where the Mungiki forcefully collects money from the community through extortion rackets especially in the transport sector and 'protection fees'.

[242] Ngirachu, J and Waithaka, C. How Mungiki became most serious internal security threat, Daily Nation, 12 March 2009.- cited by Adams Oloo (2010)

Sabaot Land Defense Force (SLDF)

Similarly, in the Mt. Elgon region in Kenya, the Sabaot Land Defense Force (SLDF) provides security and protection to the population residing in these areas. Due to the government absence in the Mt. Elgon region in 2006-2008 as a result of the land clashes that had erupted in the area, the SLDF made its own laws that the inhabitants had to obey[243]. The SLDF established an administration system complete with mechanisms for levying illegal taxes[244]. They formed informal courts that punished those who were suspected to have acquired land illegally. In many ways their operations are similar to those of their Mungiki counter parts. They forcefully collect taxes from the people. Further, Mt. Elgon being an agricultural area, the SLDF collects part of the food produce for every unit area harvested[245]. They also collect levies from public service vehicles. These sources of income have made SLDF attractive to the unemployed lower class youth. This study has shown that originally the aim of the SLDF was to evict non-indigenous people from Mt. Elgon as they believe it belonged to the Sabaot and the Kamatusa communities. However their activities have changed over time into service provision as explained above.

Again, like the Mungiki, their relationship with the community is both parasitic and symbiotic; Parasitic in the sense that they depend on the community to finance their existence symbiotic in that the community needs them for their own security. The absence of a state mechanism to tackle their problems has left the area wide open for the occupation and proliferation of illegal militia groups like the SLDF.

[243] Adams Oloo. (2010). Marginalisation and Rise of Militia Groups in Kenya. In , Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

[244] ibid

[245] Wanyonyi, R. (2008). Vigilante demand 'fee' from teachers, East African Standard, 15 January;
Simiyu, Militianisation of resource conflicts.

6.2.2 If so, what are the implications on service delivery to the community?

To the first question, *"Is the proliferation of organic and organized criminal groups in Kenya a function of state policy failure?"* We answered **YES.** Then the implications of the proliferation of militia groups on service delivery to the community can be summarized as follows:

As this study has illustrated, a state manifests its social contract with the citizens through implementation of its core functions that includes maintenance of security, enabling economic development and provision of basic services to meet the needs of the population[246]. On the other hand, state fragility weakens service provision by the government and leads to other non-state actors rising to fill in the gap created by state policy failure[247].

Therefore, provision of basic services by non-state actors has a negative effect on the state, while at the same time having a positive effect on the community. With regards to the state, the provision of basic core functions of the state by non-state actors has negative effects on the accountability, legitimacy and sovereignty of the state. The state becomes irrelevant to its citizens, especially those affected by poor service provision. As a result, they lose their legitimacy over their citizens. The population no longer trusts the ability of the state to meet their basic needs, and therefore the state loses their support.

However, when alternative forces emerge, a kind of relationship is formed between the alternative non-state actors and the community. This relationship has positive effects on the community in that; the community members can now enjoy the services that they once lacked. Access to basic services such as water, electricity, food and security is made available to the community by these alternative forces at a lower rate that the community members can afford.

[246] Batley, R. and Mcloughlin, C. (2010). Engaging with non-state service providers in Fragile states: Reconciling State Building and Service Delivery. Development Policy Review, 28(2), pp 131-154

[247] OECD/DAC. (2008). Service Delivery in Fragile Situations: Key Concepts, Findings and Lessons. Journal on Development. 9 (3)

Although the non-state actors illegally provide these services, the community enjoys them. The state on the other hand is unable to get rid of these alternative forces from operating in the low-income population because of the symbiotic relationship that exists between them and the community. Therefore, the state is only left with the option of coming up with better policies that will integrate the services provided by the non-state actors with the state basic functions.

Therefore, to ensure efficient service delivery by the state to its citizens, the goals of the citizens as well as those of the non-state service providers have to be met. In this case, a new form of social contract needs to be established between the state, the citizens and the non-state actors to ensure the goals of all the stakeholders are met. The state has to come up with a strategy on how to work together with the alternative forces to provide the basic services to the low-income population at an affordable rate.

In this case, the state should develop policies that will ensure the needs of the people; especially those in the slum areas are met. However, these policies should also ensure that the state is working together with these militia groups already embedded in the community to ensure effective and efficient service provision. This can be achieved by the state contracting out the militia groups to act as their agents in providing the basic services to the community. Otherwise, they may experience resistance from both the community members and the militia groups and may not be able to execute their policies efficiently to meet the needs of all citizens.

BIBLIOGRAPHY

Abdi Samatar and Ahmed I. Samatar.*(*2002). The African State: Reconsiderations. eds. Portsmouth, NH: Heinemann,. 286 pp.

Adams Oloo. (2010). Marginalisation and Rise of Militia Groups in Kenya. In , Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

Andrew, M.Grascia. (2004). Gang Violence: Mara Salvatrucha-"Forever Salvador". In *Journal of gang research,* 11 (2) pp 29-36

Arian Campo-Flores, *Andrew Romano*. (2005). The Most dangerous gang in America: MS 13. In *Newsweek*. New York: Vol. 145, Iss. 13; pg. 23-26

Baird, M. (2010). Service Delivery in Fragile and conflict affected states in world development report 2004. World Bank

Bates, Robert. (2008). "When Things Fell Apart: State Failure in late Century Africa". New York: Cambridge University Press

Batley, R. and Mcloughlin, C. (2010). Engaging with non-state service providers in Fragile states: Reconciling State Building and Service Delivery. *Development Policy Review,* 28(2), pp 131-154

Ben Rawlence. (2008). "All the men have gone": War crimes in Kenya's Mt. Elgon Conflict. New York: Human Rights Watch

Boas Morten. (2007). Economic indicators and ethno-national rebellion. The case for secessionist and non-secessionist groups, Paper presented at the annual meeting of the International Studies Association, 48th annual convention, Chicago, Illinois, 28 February 2007

Bobbio, Norberto (1989). Democracy and Dictatorship: The Nature and Limits of State Power. University of Minnesota Press

Books, LLC. (2010). Prison Gangs: Aryan Brotherhood, the Numbers Gang, Mexican Mafia, Nuestra Familia, Thief in Law, Prison Gang, Volksfront, Norteños. General Books LLC

Brendan McGuigan (2003). What is Dependency Theory?. *In WiseGEEK.* USA: Conjecture Corporation [Available at: http://www.wisegeek.com/what-is-dependency-theory.htm] Accessed on 8th March 2012

Brinkerhoff, D.W. (2011). State Fragility and Governance: Conflict Mitigation and sub national perspective. *Development policy review.* 29(2): 131-153

British Broadcasting Cooperation, Profile: Mungiki: Kenya's secretive sect, BBC, 24 May 2007, http://news.bbc.co.uk/2/hi/africa/6685393.stm (accessed November 2011). Cited by Nyabola, H. N., 2009, 'The Legal Challenge of Civil Militia Groups in Kenya', ISS African Security Review, vol. 18, no. 3, pp. 90-102

Bureau of African Affairs. (2012). Kenya Profile. US: US Department of State. Available at http://www.state.gov/r/pa/ei/bgn/2962.htm (Accessed on 6th March 2012)

Cesare Beccaria (1764): An Essay on Crime and Punishment (Dei Delitti e dello Pene). Translated with Introduction by H Paolucci. Indianapolis. In Bobbs- Merrills 1975.

Charles W. Bergquist, Ricardo Peñaranda, Gonzalo Sánchez G. (2001). Violence in Colombia, 1990-2000: waging war and negotiating peace. Wilmington: Scholarly Resources Inc

Commonwealth Human Rights Initiative, (2006): 63; Van der Spuy, Elrena and Ricky Röntsch. 2008, p. 34

Cudworth, Erika et al. (2007). The Modern State: Theories and Ideologies. Edinburgh University Press.

Cammack,D, Mcleod, D, Rocha Menocal & Christiansen, K. (2006). Donors and the 'Fragile States' Agenda: A Survey of Current Thinking and Practice, Report Submitted to the Japan International Cooperation Agency, London: Overseas Development Institute, pp 16–18.

Dafe, F, (2009). No Business like slum business? The Political economy of continued existence of slums: A case study of Nairobi. London: Development studied institute, LSE

Dennis Rodgers. (1999). Youth gangs and Violence in Latin America and the Caribbean: A literature survey. In, LCR sustainable development working paper no.4: Urban peace program series. LCR: world bank

East African Standard (EAS). (2002). "Kenya: A-G Orders Arrest of Mungiki Followers." (Africa News/NEXIS) also Integrated Regional Information Networks (IRIN 9 March 2002. "Kenya: Police Name Outlawed Groups." (Africa News/NEXIS)

Wamue, G, Revisiting our indigenous shrines through Mungiki, African Affairs 100 (2001), 453–467

Gani J Yoroms. (2005). Militias as a social phenomenon: towards a theoretical construction, in David Francis, J (e d), Civil militia; Africa's intractable security menace? Aldershot: Ashgate, 2005, 31–50.

Gerhard,V.L, Steffensen, J. and Naitore, H. (2007). Local Level Service Delivery, Decentralization, and Governance Case of Kenya. Denmark: JICA.

Gulyani, S., Talukdar, D. and Potter, C. (2006). *Inside Informality: Poverty, Jobs, Housing and Services in Nairobi's Slums*. Report No. 36347-KE, Africa Water and Urban Unit 1. Washington, DC: World Bank.

Hamisi Mboga. (2009). Understanding the Local Government System in Kenya: A citizen's Handbook. Kenya: Institute of Economic Affairs

Hay, Colin (2001). "State theory". In Jones, R.J. Barry. Routledge Encyclopedia of International Political Economy: Entries P-Z. Taylor & Francis. pp. 1469

Hout, W. (2010). Between Development and Security: the European Union, governance and fragile states. Third World Quarterly, 31(1), pp. 143.

Huchzermeyer, M. (2008). Slum Upgrading in Nairobi within the Housing and Basic Services Market. A Housing Rights Concern. *Journal of Asian and African Studies* 43(1): 19–39.

Hyden, G. (1980). Beyond Ujamaa in Tanzania. London: Heinemann

Integrated Regional Information Networks (IRIN). (2002). "Kenya: Police Target Illegal Gangs after Kariobangi." (Africa News/NEXIS)

International Crisis Group (ICG) Crisis Group Africa Report N°137, 21 February (2008), Kenya in Crisis

Jerome Lafargue. (2008). The General Elections in Kenya, 2007. Nairobi: IFRA

John Locke (1690). Two Treatise of Government. [Available at: http://oregonstate.edu/instruct/phl302/texts/locke/locke2/locke2nd-a.html] Accessed on 29th Feb 2012

John Quiggin.(2006). "Economic constraints on public policy", in Micheal Moran, Martin Rein and Robert E.Goodin, *The Oxford Handbook on Public Policy* .(Oxford:Oxford University Press), 537

Joshua D. Freilich, Nelson A. Pichardo Almanzar & Craig J. Rivera (1999): How social movement organizations explicitly and implicitly promote deviant behavior: The case of the militia movement, Justice Quarterly, 16:3, 655-683

Kagwanja, P. (2003). Facing Mount Kenya or facing Mecca. The Mungiki, ethnic violence and the politics of the Moi succession in Kenya, 1987-2002. *African Affairs, 102*, 25-49.

K'Akumu, O.A. and Olima W.H.A. (2007).The dynamics and implications of residential segregation in Nairobi. *Habitat International* 31: 87–99.

Klay,G.K. (2009). Reconstituting the Neo-Colonial State in Africa. Journal of Third world studies, vol XXVI, No.1

KNCHR, (2008). On the brink of the precipice: A Human Rights account of Kenya's post-2007Election violence

Luk Van Langenhove. (2004). Regionalising Human Security in Africa. *Paper for the "UNU-TICAD III Follow-up" Workshop Tokyo, 29-30 March 2004.* United Nations University: UNU-CRIS

Makong'o , J. and Muchanga, K. (2006). History and Government: Peak Revision KSCE. Kenya: East African Educational Publishers

Makongo, J, et al (2004). History and Government 3. Nairobi: East African Educational Publishers ltd.

Marie-Joelle Zahar, (2006). Protégés, clients, canon fodders: ci vilians in t he c alculus o f mi litias, in Adekeye Adebayo and Chandra Lekha (eds), Managing armed conflicts in the 21st century, London: Frank Cass, 108.

Mautinussen, J. (1997). Society State and Market: A guide to competing theories of development. New York: Zed Books pp 386

Mehrotra, S. (2005). Rogues No More? Water Kiosk Operators Achieve Credibility in Kibera. WSP Field Note. Nairobi: World Bank.

Mutahi Ngunyi And Musambayi Katumanga (2011) From Monopoly to Oligopoly of Violence: An Exploration of Organic and Organised Crime in Kenya. Nairobi: UNDP

Ngirachu, J and Waithaka, C. (2009). How Mungiki became most serious internal security threat, Daily Nation, 12 March 2009.

Ndungu, J. (2008). Mt.Elgon. In: Wakhungu, J., Nyukuri, E., and Huggins, C. (2008). Land Tenure and Violent Conflict in Kenya. Nairobi: Africa Centre for Technology Studies.

Ngunyi et al (2011). From Monopoly to Oligopoly of Violence. Nairobi: The Consulting House

Norberto Bobbio, "Gramsci and the concept of Civil Society", in Keane, Civil Society, pp 73-100

Nyabola, H. N. (2009). 'The Legal Challenge of Civil Militia Groups in Kenya', ISS African Security Review, vol. 18, no. 3, pp. 90-102 [Available at: http://www.ssrnetwork.net/document library/detail/5658/the-legal-challenge-of-civil-militia-groups-in-kenya]

Obudho, R. A. and G. O. Aduwo. (1989). Slums and squatter settlements in urban centres of Kenya: Towards a planning strategy. *Netherlands Journal of Housing and Environmental Research* 4(1): 17- 29.

OECD (2006). Work stream on service delivery phase 3. In: 7th meeting of Fragile States Group, October 17-18. Paris: World Bank

OECD. (2008). Concepts and Dilemmas of State Building in Fragile Situations: From Fragility to Resilience, OECD/DAC Discussion Paper, Paris: OECD, p 12.

OECD/DAC. (2008). Service Delivery in Fragile Situations: Key Concepts, Findings and Lessons. *Journal on Development.* 9 (3)

Olum, G.H. Report on Status and Implementation of National Policy on Ageing in Kenya: Prepared for UNDESA. Kenya: UNDESA

Osaghae, E. (2007). Fragile State. *Development in Practice*, Vol. 17, No. 4/5 pp. 691

Peter Waldmann (2007): Is There a Culture of Violence in Colombia?, Terrorism and Political Violence, 19:4, 593-609

Wanyonyi, R. (2008). Vigilante demand 'fee' from teachers, East African Standard, 15 January

Richard Schultz, Douglas Farah and Itamara V. Lochard, *Armed Groups: A Tier-One Security Priority,* INSS Occasional Paper 57, (USAF Academy, Colorado: USAF Institute for National Security Studies, 2004).

Richards, Paul (1996). Fighting for the Rain Forest: War, Youth & Resources in Sierra Leone. Oxford: James Currey. Pp 34-35

Rights activists decry circumcision threat, integrated regional information networks, 2008, http://www.irinnews.org/report.aspx?reportid=31538 (accessed November 2011).

Robert Hanson, Greg Warchol & Linda Zupan (2004): Policing Paradise: Law and Disorder in Belize, Police Practice and Research: An International Journal, 5:3, 241-257

San Diego Int'l L.J. 223 (2005-2006). Mara Salvatrucha (MS-13) and Ley Anti Mara: El Salvador's Struggle to Reclaim Social Order; Fogelbach, Juan J.

Se J.O Wilson and Kolling G. Broken Windows: The Police and Neighborhood safety. The Atlantic Monthly (march 1982)

Sekhar, C.S.C. (2010). Fragile States. Journal of Developing Societies (Sage Publications Inc.), 26(3), pp. 265.

Skinner, Quentin (1989). "The state". In Ball, T; Farr, J.; and Hanson, R.L.. Political Innovation and Conceptual Change. Cambridge University Press. pp. 90–131

Stewart, F. And Brown, G. (2010). (ed.3). Fragile States. London: CRISE

Sue Mahan, Katherine O'Ne. (1998). Beyond the Mafia: Organized Crime in the Americas. London: Sage Publications

Swilling, M., B. Robinson, S. Marvin & M. Hodson (2011) 'Growing Greener Cities.' Discussion paper commissioned by UN Habitat for Expert Group Meeting in Nairobi, 16-19 February, 2011

Syagga, P., Mitullah W. and Karirah-Gitau S. (2001). Nairobi Situation Analysis Consultative Report. Nairobi: Collaborative Nairobi Slum Upgrading Initiative, Government of Kenya and United Nations Centre for Human Settlements (Habitat).

Ted Leggett. (2002). Rainbow vice: the drugs and sex industries in the new South Africa. South Africa: New Africa Books (Pty) ltd.

UN Habitat. (2008). *The State of African Cities 2008: A Framework for Addressing Urban Challenges in Africa*. Nairobi: United Nations Human Settlements Programme.

United Nations Centre for Human Settlements. (2003). *The Challenge of Slums: Global Report on Human Settlements.* London: Earthscan.

Uzgalis, William, "John Locke", The Stanford Encyclopedia of Philosophy (Winter 2010 Edition), Edward N. Zalta (ed.), [available at: http://plato.stanford.edu/entries/locke/] Accessed on 29th Feb 2012

Van der Spuy, Elrena and Ricky Röntsch. (2008). Police and crime prevention in Africa: a brief appraisal of structures, policies and practices. Thematic Analysis Report, International Centre for the Prevention of Crime (ICPC), Cape Town, South Africa. In particular: "Country Case Study: Kenya," pp 10, 12

Vincent Ferraro. (2008). Dependency Theory: An Introduction. In *The Development Economic Reader, ed.* Giorgio Secondi. London: Routledge, pp 58-64

Wafula Okumu and Augustine Ikelegbe (2010). Militias, Rebels and Islamists Militants: Human Insecurity and State Crisis in Africa. Pretoria: Institute of Security Studies

Wamucii, P. (2010). HSRC Review. Youth (in)Security: Lessons from Kenya. 8(2)

Wegelin-Schuringa, M. and Kodo, T. (1997). Tenancy and sanitation provision in informal settlements in Nairobi. *Environment and Urbanization* 9(2): 181-190

World Bank. (2006). Engaging with Fragile States: An IEG report of World Bank support to low-income countries under stress. Washington, DC: World Bank

World Bank. (2009). Fragility and Conflict. Available at: http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/STRATEGIES/EXTLICUS/0,,contentMDK:22230573~pagePK:64171531~menuPK:4448982~piPK:64171507~theSitePK:511778,00.html {accessed on 7th March 2012]

Young Crawford, (2004). The end of Post- colonial state in Africa? Reflections on changing African political dynamics. African Affairs 103(410), pp23-49

Young, C. (1994). The African Colonial State in Comparative perspective. New Haven, CT: Yale University Press

Zoltan D. Barany. (2002). The East European Gypsies: Regime Change, Marginality, and Ethnopolitics. UK: Cambirdge University Press

Website sources

Information.go.ke. Source: http://www.information.go.ke/index.php?option=com_content&task=view&id=456&Itemid=555&limit=1&limitstart=0 [Accessed November, 2011]

The Prevention of Organized Crime Act, Cap 6 of 2010. Available at: www.kenyalaw.org [Accessed November 2011]

The Daily Nation. 2010, 22 June . Seven shot dead as police war on crime intensifies. The Daily Nation (Kenya): Provincial. Available: http://www.nation.co.ke/News/regional/7%20shot%20dead%20as%20police%20war%

20on%20crime%20intensifies/-/1070/944676/-/tr0r56z/-/index.html [Accessed November, 2011]

Kenya Police Website: http://www.kenyapolice.go.ke/images/VISION.gif [last accessed Nov 2011]

Kenya Police Website: http://www.kenyapolice.go.ke/Formations.asp [last accessed Nov 2011]

Kenya Police Website: http://www.kenyapolice.go.ke/rift.asp [last accessed Nov 2011]
Administration Police website: http://www.administrationpolice.go.ke[last accessed Nov 2011]